SUPREME COURT OF THE UNITED STATES.

No. 234.

WILLIAM WOODWARD, CHRISTOPHER COLUMBUS BALDWIN, AND WILLIAM H. BALDWIN, PLAINTIFFS IN ERROR,

vs.

THE ILLINOIS CENTRAL RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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A UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*
In the circuit court of the United States.

To the Illinois Central Railroad Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington City on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein William Woodward, William H. Baldwin, junior, and Christopher C. Baldwin are plaintiffs and the Illinois Central Railroad Company are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas Drummond, presiding judge of the said circuit court, and district judge of said northern district of Illinois, this third day of June, in the year of our Lord one thousand eight hundred and sixty-four.

THOMAS DRUMMOND.

B We hereby accp't service of the above and foregoing by copy, this third day of June, A. D. 1864.

McALLISTER, JEWETT & JACKSON,
Attorneys for the Illinois Central Railroad Company.

C UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said court before you, wherein William Woodward, Christopher Columbus Baldwin, and William H. Baldwin are plaintiffs and the Illinois Central Railroad Company is the defendant, a manifest error hath happened, to the great damage of the said William Woodward, Christopher Columbus Baldwin, and William H. Baldwin, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and

D proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, this third day of June, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth.

WM. H. BRADLEY, *Clerk.*

1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court-room, in the city of Chicago, in the district aforesaid, before the Honorable Thomas Drummond, district judge of said district, and in the absence pro tempore of the Honorable David Davis, one of the justices of the Supreme Court of the United States, sole judge of said circuit court, on Tuesday, the twenty-fourth day of May, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth year.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY.

Be it remembered, that on the tenth day of December, in the year of our
2 Lord one thousand eight hundred and sixty-two, came William Woodward, William H. Baldwin, jr., Christopher Columbus Baldwin, plaintiffs, by Messrs. Gookins, Thomas & Roberts, their attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, their bond for costs in the above-entitled cause; and also at the same time filed their præcipe for a writ of summons; which said bond and præcipe are in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Circuit court, December term, A. D. 1862.

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin, partners, trading under the name of Woodward, Baldwin & Company,
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY.
} Assumpsit.

I, Isaac Simmons, enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plain-
3 tiff of any costs ordered and adjudged to be paid by them, hereby agree and stipulate that execution may issue against my property for any costs taxed against.

Dated this tenth day of December, A. D. 1862.

ISAAC SIMMONS.

GOOKINS, THOMAS & ROBERTS.

Endorsed: Filed Dec. 10th, A. D. 1862.

WM. H. BRADLEY, *Clerk.*

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JUNIOR, and Christopher Columbus Baldwin, partners, trading under the name of Woodward, Baldwin & Company,
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY.

The clerk of the circuit court of the United States for the northern district of Illinois will please issue summons in assumpsit, returnable to the December term, 1862, damages twenty-five thousand dollars, ($25,000.)

December 10th, 1862.

GOOKINS, THOMAS & ROBERTS,
Attorneys for Plaintiffs.

Endorsed: Filed Dec. 10, 1862.

WM. H. BRADLEY, *Clerk.*

4 On this day, to wit, the tenth day of December, A. D. 1862, a writ of summons issued out of said clerk's office against said defendant, in said entitled cause; which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Circuit court of the United States of America, northern district of Illinois.

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you that you summon the Illinois Central Railroad Company, if it shall be found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, at the next term thereof, to be holden at Chicago, in the district aforesaid, on the third Monday of December instant, to answer unto William Woodward, William H. Baldwin, junior, and Christopher Columbus Baldwin, partners, trading under the name of Woodward, Baldwin & Company, in a plea of trespass on the case upon promises, to their damage, as they alledge, of twenty-five thousand dollars. And have you then and there this writ.

Witness the Hon. Roger B. Taney, chief justice of the Supreme
5 Court of the United States of America, at Chicago aforesaid, this 10th day of December, in the year of our Lord one thousand eight hundred and sixty-two, and of our independence the 87th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

I have, this 12th day of December, A. D. 1862, served the within writ, by leaving a copy thereof in the hands of William H. Osborne, president of the within-named Illinois Central Railroad Company.

J. R. JONES, *U. S. Marshal,*
By GEO. L. WEBB, *Deputy.*

Endorsed: Filed Dec. 15th, A. D. 1862.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the 11th day of May, A. D. 1863, came the plaintiffs, by their attorneys, and filed in said clerk's office the stipulation of the defendants in said entitled cause; which said stipulation is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern District of Illinois:*

6 In the circuit court, May term, 1862.

WILLIAM WOODWARD, WILLIAM H. BALDWIN, AND CHRISTOPHER C. BALDWIN vs. THE ILLINOIS CENTRAL RAILROAD COMPANY.	Assumpsit.

It is hereby agreed that the plaintiffs may file a declaration in an action on the case in the above-entitled cause as a substitute for the declaration in assumpsit now filed, and the said cause shall proceed to trial as tho' the action were originally brought in trespass on the case, and the plea filed by defendant shall be refiled by the clerk to said declaration in case.

Chicago, May 6, 1863.

McALLISTER, JEWETT & JACKSON,
Att'ys for Def't.

Endorsed: Filed May 11, 1863.

WM. H. BRADLEY, *Clk.*

7 On this day, to wit, the eleventh day of May, A. D. 1863, came said plaintiffs, by their attorneys, and filed in said clerk's office their declaration against said defendant in said entitled cause; which said declaration is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern District of Illinois:*

In the circuit court, of the December term, 1862.

William Woodward, William H. Baldwin, junior, and Christopher C. Baldwin, partners, trading under the firm, name, and style of Woodward, Baldwin & Co., who are citizens of the State of Maryland, residing at Baltimore, in said State, plaintiffs, complain of the Illinois Central Railroad Company, a citizen of the State of Illinois and of the district aforesaid, defendant, in an action of trespass on the case, for that whereas the defendant, be-
8 fore and at the time of the delivery of the goods and chattels, to wit, as hereinafter mentioned, was, and from thence hitherto has been and still is, a common carrier of goods and chattles for hire, to wit, from Cairo to Chicago, in Illinois, and elsewhere, to wit, at the district aforesaid.

And whereas, also, the plaintiffs, whilst the defendant was such common carrier as aforesaid, to wit, on the 28th day of October, A. D. 1862, at Cairo, Illinois, to wit, at the district aforesaid, caused to be delivered to the said defendant, and the defendant then and there accepted and received of and from the said plaintiffs, fifty bales of cotton, containing and weighing twenty-four thousand three hundred and seventy-seven pounds, of the said plaintiffs, of great value, to wit, of the value of twenty-five thousand dollars, lawful money of the United States, to be safely and securely carried and conveyed by the defendant from Cairo aforesaid to Chicago aforesaid, and then, to wit, at Chicago aforesaid, safely and securely to be delivered for the said plaintiffs for certain reasonable hire and reward to the defendant in that behalf. Yet the said defendant, not regarding its duty as such common carrier in that behalf, but intending to injure the plaintiffs in the premises, did not nor would safely and securely carry or convey the said cotton from Cairo
9 aforesaid to Chicago aforesaid, nor then, to wit, at Chicago aforesaid, safely or securely to deliver the same for the said plaintiffs; but on the contrary thereof, the defendant so being such common carrier as aforesaid, so negligently and carelessly behaved and conducted itself in the premises that by and through the carelessness and negligence of the defendant in the premises, the said cotton being of the value aforesaid, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, became and was wholly lost to the plaintiffs, to wit, at the northern district aforesaid.

2. And whereas, also, the said defendant, before and at the time of the delivery of the goods and chattels to it, and of the grievances as hereinafter next mentioned, was a common carrier of goods and chattles for hire, to wit, from Cairo, Illinois, to Chicago, Illinois, and elsewhere, to wit, at the district aforesaid. And whereas, also, whilst the defendant was such common carrier as aforesaid, to wit, on the 28th day of October, 1862, to wit, at the district aforesaid, the said defendant, as such common carrier as aforesaid, received into its custody fifty other bales of cotton, weighing twenty-four thousand three hundred and seventy-seven pounds, of great value,
10 to wit, of the value of twenty-five thousand dollars, the property of the plaintiffs, to be carried and conveyed on and along its said railroad, and delivered safely and securely for the plaintiffs to the next carrier, according to usage, in its transit to Baltimore, in Maryland, for certain reasonable reward to it in that behalf. Yet the defendant, not regarding its duty in that behalf, did not nor would carry and convey in and along its said railroad the said cotton, and deliver the same safely and securely for the plaintiffs to the next carrier, according to the usage of business, in its transit to Baltimore, in Maryland; but on the contrary thereof, the defendant conducted itself so negligently and carelessly in that behalf that by and through its carelessness and negligence in the premises the cotton aforesaid, while so in the possession and custody of the defendant, and in the cars of the de-

fendant, in transit in and along its said railroad, was wholly lost to the plaintiffs, to wit, at the district aforesaid.

3. And whereas, also, the said defendant, at the time of the receipt of the goods and chattels by it, as hereinafter mentioned, was, and from thence hitherto has been, and still is, a common carrier of goods and chattels
11 for hire in and upon its railroad, to wit, from Cairo, Illinois, to Chicago, Illinois, and other places in said State, to wit, at the district aforesaid. And whereas, also, the plaintiffs, whilst the defendant was such common carrier as aforesaid, to wit, on the 28th of October, 1862, to wit, at the district aforesaid, caused to be delivered to the defendant, and the defendant then and there received of and from the plaintiffs, fifty other bales of cotton, weighing twenty-four thousand three hundred and seventy-seven pounds, of the said plaintiffs, of great value, to wit, of the value of twenty-five thousand dollars, to be safely and securely carried and conveyed by the defendant in and along its said road towards the point of its final destination, to wit, Baltimore, in Maryland, for certain reasonable hire and reward. Yet the defendant, not regarding its duty as such common carrier in that behalf, did not nor would safely and securely carry and convey the said goods and chattles, to wit, the said cotton, in and along its said road towards the point of its final destination, to wit, Baltimore aforesaid; but on the contrary thereof, the defendant, as such carrier, so negligently and carelessly behaved in the premises that by and through its carelessness and negligence
12 the said cotton, of the value aforesaid, while being carried and conveyed in and along the said railroad of the defendant, and while in the custody of the defendant, as aforesaid, was wholly lost to the plaintiffs, to wit, at the district aforesaid.

4. And whereas, also, the said defendant, before and at the time of the delivery of the goods and chattels to it, as hereinafter mentioned, was, and from thence hitherto has been, and still is, a common carrier of goods and chattels for hire, to wit, from Cairo to Chicago, in Illinois, and elsewhere, to wit, at the district aforesaid. And whereas, also, at the time of the grievances hereinafter mentioned there were other railroads acting as common carriers of goods and chattles for hire between Chicago aforesaid and Baltimore, in the State of Maryland. And whereas, also, the plaintiffs, whilst the defendant was such common carrier as aforesaid, to wit, on the 28th day of October, 1862, at Cairo, to wit, at said district, caused to be delivered to the said defendant, and the defendant then and there accepted and received of and from the plaintiffs, fifty other bales of cotton, weighing twenty-four thousand three hundred and seventy-seven pounds, of the said plaintiffs, of great value, to wit, of the value of twenty-five thousand dollars, to be safely and
13 securely carried and conveyed by the defendant from Cairo aforesaid to Chicago aforesaid, and there, to wit, at Chicago aforesaid, safely and securely to be by defendant forwarded by said other common carriers between Chicago and Baltimore aforesaid, for the plaintiffs at Baltimore aforesaid, to wit, on the day and year aforesaid, at the district aforesaid. Yet the defendant, not regarding its duty in that behalf as such common carrier, did not nor would safely and securely carry and convey the said cotton from Cairo aforesaid to Chicago aforesaid, and there, to wit, at Chicago aforesaid, safely and securely forward the said cotton by said other common carriers between Chicago and Baltimore aforesaid, for the plaintiffs at Baltimore aforesaid; but, on the contrary thereof, the defendant, as such common carrier, so negligently and carelessly behaved in the premises that by and through its carelessness and negligence the said cotton, of the value aforesaid, while being in the possession of the defendant in transit along its said railroad, was wholly lost to the plaintiffs, to wit, on the day and year and at the district aforesaid.

5. And whereas, also, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, the plaintiffs, at the special instance and re-
14 quest of the defendant, caused to be delivered to the defendant, and the defendant then and there received, as such common carrier, at Memphis, in the State of Tennessee, to wit, at the district aforesaid, fifty other bales of cotton of the plaintiffs, weighing twenty-four thousand three hundred and seventy-seven pounds, of great value, to wit, of the value of twenty-five thousand dollars; and the defendant, as such carrier, then and there entered into an agreement with the plaintiffs in respect to the carriage of the said cotton, commonly called a bill of lading, in words and figures following, to wit:

"Shipped, by Dan. Able, for ac. C. Meyer, forwarding and commission merchant, Bradley Block, foot of Jefferson st., in good order and condition, on board the good steamboat called the John H. Dickey, whereof
is master for the present voyage, the following articles, being marked and numbered as below, and are to be delivered without delay, in the like good order and condition, at the port of Cairo, (fire and the unavoidable dangers of the river only excepted,) unto Graham, Able & Co., or to their assigns,
15 we or they paying freight at the rate of two and 97-100 dollars per 100, through to Baltimore, and charges.

"In witness whereof, the owner, master, or clerk of said boat hath affirmed to 5 bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

"Dated at Memphis this 24 day of Oct., 1862.

"L D, from 1 to 50, (50) fifty bales cotton.

"Not accountable for condition, hoops off, or bagging torn, and owner assumes all risk of fire and unavoidable accidents en route to destination.

"W. G. COVODE,
"For DAN'L ABLE & CO.,
"*Ag'ts Ill. Central R. R'd.*

"For Woodward, Baldwin & Co., Baltimore, Md., John H. Dickey."

16 To wit, on the day and year, and at the district aforesaid. Yet the said defendant, not regarding its said duty as such common carrier in that behalf, did not deliver the said cotton according to the said agreement and its duty, but behaved and conducted itself in the premises in respect to the said cotton and the agreement concerning the same, as aforesaid, in so negligent and careless a manner that by and through the negligence and carelessness of the defendant in the premises the said cotton was wholly lost to the plaintiffs, to wit, on the day and year and at the district aforesaid.

6. And whereas, also, the said defendant, before and at the time of the delivery of the goods and chattels to it, as hereinafter mentioned, was, and from thence hitherto has been, and still is, a common carrier of goods and chattels for hire, to wit, from Cairo, Illinois, to Baltimore, Maryland, and elsewhere, to wit, at the district aforesaid. And whereas, also, the said plaintiffs, whilst the said defendant was such common carrier as aforesaid, to wit, on the 28th day of October, 1862, at Cairo aforesaid, to wit, at the district aforesaid, caused to be delivered to the said defendant, and the defend-
ant then and there accepted and received of and from the said
17 plaintiffs, fifty other bales of cotton, weighing twenty-four thousand three hundred and seventy-seven pounds, of the plaintiffs, of great value, to wit, of the value of twenty-five thousand dollars, to be safely and securely carried and conveyed by the said defendant from Cairo aforesaid to Baltimore, in Maryland, and there, to wit, at Baltimore aforesaid, safely and securely to be delivered for the said plaintiffs, for certain reasonable reward

to the defendant in that behalf. Yet the said defendant, not regarding its duty in that behalf as such common carrier as aforesaid, did not nor would safely or securely carry and convey the said fifty bales of cotton from Cairo aforesaid to Baltimore aforesaid, nor there, to wit, at Baltimore aforesaid, safely and securely deliver the same for the said plaintiffs; but, on the contrary thereof, said defendant, so being such common carrier as aforesaid, so carelessly and negligently behaved and conducted itself in the premises that by and through the carelessness, negligence, and default of the said defendant in the premises the said fifty bales of cotton, being of the value aforesaid, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, while in the custody and possession of the defendant, became and were wholly lost to the said plaintiffs, to wit, at the district aforesaid.

18 7 And whereas, also, the said defendant, before and at the time of the delivery of the goods and chat., to wit, as hereinafter mentioned, was, and from thence hitherto has been, and still is, a common carrier of goods and chattels for hire, to wit, from Memphis, Tennessee, to Baltimore, Maryland, and elsewhere, to wit, at the district aforesaid. And whereas, also, the said *said* plaintiffs, whilst the said defendant was such common carrier as aforesaid, to wit, on the 28th day of October, 1862, at Memphis aforesaid, to wit, at the district aforesaid, caused to be delivered to the said defendant, and the said defendant then and there accepted and received of and from the said plaintiffs, fifty other bales of cotton, weighing twenty-four thousand three hundred and seventy-seven pounds, of the plaintiffs, of great value, to wit, of the value of twenty-five thousand dollars, to be safely and securely carried and conveyed by the said defendant from Memphis aforesaid to Baltimore, in Maryland, and there, to wit, at Baltimore aforesaid, safely and securely to be delivered for the said plaintiffs for certain reasonable reward to the defendant in that behalf. Yet the said defendant, not regarding its duty in that behalf as such common carrier as aforesaid, did not nor would

19 safely or securely carry and convey the said fifty bales of cotton from Memphis aforesaid to Baltimore aforesaid, nor there, to wit, at Baltimore aforesaid, safely and securely deliver the same for the said plaintiffs; but, on the contrary thereof, the said defendant, so being such common carrier as aforesaid, so carelessly and negligently behaved and conducted itself in the premises that by and through the carlessness, negligence, and default of the said defendant in the premises the said fifty bales of cotton, being of the value aforesaid, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, while in the custody and possession of the defendant, became and were wholly lost to the said plaintiffs, to wit, at the district aforesaid.

8. And whereas, also, the said defendant, before and at the time of the delivery of the goods and chattels to it as hereinafter mentioned, was, and from thence hitherto has been, and still is, a common carrier of goods and chattels for hire, to wit, from Memphis, in Tennessee, to Chicago, Illinois, and elsewhere, to wit, at the district aforesaid. And whereas, also, the plaintiffs, whilst the defendant was such common carrier as aforesaid, to wit, on the 24th day of October, A. D. 1862, at Memphis, Tennessee,

20 to wit, at the district aforesaid, caused to be delivered to the said defendant, and the said defendant then and there accepted and received of and from the said plaintiffs, fifty other bales of cotton, containing and weighing twenty-four thousand three hundred and seventy-seven pounds, of the said plaintiffs, of great value, to wit, of the value of twenty-five thousand dollars, to be safely and securely carried and conveyed by the defendant from Memphis aforesaid to Chicago aforesaid, and there, to wit, at Chicago aforesaid, safely and securely to be delivered for the said plaintiffs for certain reasonable hire and reward to the defendant in that behalf.

Yet the defendant, not regarding its duty as such common carrier in that behalf, did not nor would safely and securely carry or convey the said cotton from Memphis aforesaid to Chicago aforesaid, nor there, to wit, at Chicago aforesaid, safely or securely deliver the same for the plaintiffs; but, on the contrary thereof, the said defendant, so being such common carrier as aforesaid, so negligently and carelessly behaved and conducted itself in the premises that by and through the carelessness and negligence of the defendant in the premises the said cotton, being of the value aforesaid, afterwards, to wit, on the day and year aforesaid, at the district aforesaid,
21 was wholly lost to the plaintiffs, to the damage of the said plaintiffs of twenty-five thousand dollars. And therefore they bring suit.

GOOKINS, THOMAS & ROBERTS,
Att'ys for Pla'ffs.

Endorsed: Filed May 11, 1863, as per stipulation.
WM. H. BRADLEY, *Cl'k.*

22 On this day, to wit, the eleventh day of May, A. D. 1863, came said defendant, by its attorneys, and filed its plea in said entitled cause; which said plea is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

In the circuit court of said district, March term, A. D. 1863.

WILLIAM WOODWARD, WILLIAM H. BALDWIN, AND Christopher Columbus Baldwin
vs.
ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

And the said defendant, by McAllister, Jewet & Jackson, its attorneys, comes and defends the wrong and injury, when, &c., and says that it is not guilty of the said supposed greivenses above laid to its charge, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against it. And of this the said defendant puts itself upon the country, &c.

McALLISTER, JEWETT & JACKSON,
Att'ys for Def't.

Endorsed: Filed May 11th, 1863.
WM. H. BRADLEY, *Cl'k.*

23 On this day, to wit, the 22d day of July, in the July term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

Now come the parties, by their attorneys, and upon issue joined come a jury of good and lawful men, to wit, William M. Wooley, B. F. Chase, Geoffrey O. Connell, David J. Pinkney, S. W. Wadsworth, W. R. Downs, Joseph S. Linell, Anderson Grimes, Isaac Coales, Benjamin Richardson, N. H Edgerton, and E. N. Tucker, who are all duly elected, tried, and sworn to well and truly try said issue. After hearing a part of the evidence, the hour of adjournment having arrived, the further trial is postponed until to-morrow morning.

On this day, to wit, the 23d day of July, in the July term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

24 WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., and Christopher Columbus Baldwin
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

Now come again the parties, by their attorneys, and come also the jury in this behalf empannelled and sworn, and after hearing the conclusion of the evidence the argument of counsel is postponed until to-morrow morning.

On this day, to wit, the 24th day of July, in the July term, A. D. 1863, of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

Now come again the parties, by their attorneys, and come the jury in this behalf empannelled and sworn, and after hearing the argument of
25 counsel and the instructions of the court, retire to consider of their verdict, and by agreement of parties, when the jury shall have found their verdict they may sign and seal the same, deliver it to the clerk and disperse.

On this day, to wit, the 25th day of July, in the July term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

Now come again the parties, by their attorneys, and the jury having been returned into court, say they cannot agree on a verdict, and by consent of the attorneys for the respective parties it is ordered by the court that they be discharged from further consideration of the same, and the cause continued to the next term.

On this day, to wit, the 29th day of October, in the adjourned
26 October term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause in the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
vs.
THE ILLINOIS CENTRAL RAILROAD CO. } Case.

Now come the parties, by their attorneys, and upon issue joined come a jury of good and lawful men, to wit, W. M. Butler, Justus Harris, Samuel Guiner, A. H. Holden, Samuel McColter, Augustus Kovats, C. W. Hamilton, George W. Bentley, A. T. Sherman, L. R. Osborn, John G. Mitchell, and L. W. Lawrence, who are all duly elected, tried, and sworn to well and truly try said issue. After hearing a part of the evidence, the hour of adjournment having arrived, the further trial is postponed until to-morrow morning.

On this day, to wit, the 30th day of October, in the adjourned October term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

27 WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., and Christopher Columbus Baldwin *vs.* THE ILLINOIS CENTRAL RAILROAD CO. } Case.

Now come the parties, by their attorneys, and come also the jury in this behalf empannelled and sworn, and after making further progress in the trial of said cause, the hour of adjournment having arrived, the further hearing is postponed until to-morrow morning.

On this day, to wit, the 31st day of October, in the adjourned October term, A. D. 1863, of said court, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin *vs.* THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

Now come again the parties, by their attorneys, and come also the jury in this behalf empannelled and sworn, and after progressing in the trial
28 of said cause until the hour of adjournment without concluding the same, the further trial is postponed until next Monday morning.

On this day, to wit, the 2d day of November, in the adjourned October term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin *vs.* THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

Now come again the parties, by their attorneys, and come also the jury in this behalf empannelled and sworn, and after hearing the conclusion of the evidence and a part of the argument of counsel, without concluding the same, the hour of adjournment having arrived, the further argument is postponed until to-morrow morning.

On this day, to wit, the 3d day of November, in the adjourned October term, A. D. 1863, of said court, in the record of the proceedings thereof
29 in said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin *vs.* ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

Now come again the parties, by their attorneys, and come also the jury in this behalf empannelled and sworn, and after hearing the concluding argument of counsel and the instructions of the court, retire to consult on their verdict with leave, by agreement of parties, when they shall have agreed on their verdict they may sign and seal the same, deliver it to the clerk, and disperse.

On this day, to wit, the 4th day of November, in the adjourned October term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin *vs.* ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

30 Now come again the parties, by their attorneys, and the jury having returned into court and say they cannot agree upon a verdict,

and by consent of the attorneys for the respective parties, it is ordered by the court that they be discharged from the further consideration of the same, and the cause continued.

On this day, to wit, the 3d day of February, A. D. 1864, in the December term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

Now come the parties, by their attorneys, and upon issue joined thereupon come a jury of good and lawful men, to wit, Leonard Howard, Thomas McDonald, John S. Brown, John Lobstein, Henry E. Badger, George Thompson, Isaac Read, Elijah Smith, Nathaniel Sleeper, A. H. Heald,
31 George L. Herrick, and R. N. Allen, who were all duly elected, tried, and sworn well and truly to try said issue, and after hearing a part of the evidence, the hour of adjournment having arrived, the further trial of the cause is postponed until to-morrow morning.

On this day, to wit, the 4th day of February, A. D. 1864, in the December term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

Now come again the parties, by their attorneys, and come also the jury heretofore empannelled and sworn herein, and after progressing in the trial of said cause until the hour of adjournment without concluding the same, the further trial is postponed until to-morrow morning.

On this day, to wit, the fifth day of February, A. D. 1864, in the December term, A. D. 1863, of said court, in the record of the proceedings
32 thereof in said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

Now come again the parties, by their attorneys, and now come also the jury heretofore empannelled and sworn herein, and after progressing in the trial of said cause until the hour of adjournment without concluding the same, the further trial is postponed until to-morrow morning.

On this day, to wit, the 6th day of February, A. D. 1864, in the December term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

33 Now come again the parties, by their attorneys, and now come also the jury heretofore empannelled and sworn herein, and after progressing in the trial of said cause until the hour of adjournment without concluding the same, the further trial of the cause is postponed until Monday morning next.

On this day, to wit, the ninth day of February, A. D. 1864, in the December term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

Now come again the parties, by their attorneys, and come also the jury in this behalf empannelled and sworn, and after hearing the concluding argument of counsel and the instructions of the court, retire to consider of their verdict with leave, by agreement of parties, that when they shall
34 have agreed on the same they may sign, seal, and deliver it to the clerk, and disperse.

On this day, to wit, the 11th day of February, A. D. 1864, in the December term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

The jury having been this morning returned into court and reported that they were unable to agree upon a verdict, and that there was no possibility of their agreeing; thereupon, by consent of the parties, by their attorneys, the court discharge the jury from the further consideration of the same.

On this day, to wit, the 11th day of May, in the adjourned May term, A. D. 1864, of said court, in the record of the proceedings thereof in said
35 entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

Now come again the parties, by their attorneys, and come also the jury in this behalf empannelled and sworn, and after hearing additional evidence until the hour of adjournment, without concluding the same, the further trial of the cause is postponed until to-morrow morning.

On this day, to wit, the 12th day of May, in the adjourned May term, A. D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

36 Now come again the parties, by their attorneys, and come also the jury in this behalf empannelled and sworn, and after hearing additional evidence until the hour of adjournment, without concluding the same, the further trial is postponed until to-morrow morning.

On this day, to wit, the 13th day of May, in the adjourned May term, A. D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

Now come again the parties, by their attorneys, and come also the jury in this behalf empannelled and sworn, and after hearing additional evidence until the hour of adjournment, without concluding, the further trial is postponed until to-morrow morning.

37 On this day, to wit, the fourteenth day of May, in the adjourned May term, A. D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

Now come the parties, by their attorneys, and come also the jury in this behalf empannelled and sworn, and after hearing a part of the argument of counsel until the hour of adjournment, without concluding the same, the further argument is postponed until Monday morning.

On this day, to wit, the 16th day of May, in the adjourned May term, A. D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

38 WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., and Christopher Columbus Baldwin
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

Now come again the parties, by their attorneys, and come also the jury in this behalf empannelled and sworn, and after progressing in the argument of counsel until the hour of adjournment, without concluding the same, the further argument is postponed until to-morrow morning.

On this day, to wit, the 17th day of May, in the adjourned May term, A. D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

Now come again the parties, by their attorneys, and come also
39 the jury in this behalf empannelled and sworn, and after concluding the argument of counsel, the hour of adjournment having arrived, the instructions of the court is postponed until to-morrow morning.

On this day, to wit, the 18th day of May, in the adjourned May term, A. D. 1864, of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

Now come the parties, by their attorneys, and come also the jury in this behalf empanelled and sworn, and after receiving the charge of the court retire to consider of their verdict.

On this day, to wit, the nineteenth day of May, in the adjourned May term, A. D. 1864, of said court, in the record of the proceedings thereof in
40 said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

Now come again the jury and return into court the following verdict: We, the jury, find the issue for the plaintiffs, and assess their damage to the sum of ten thousand dollars. And the defendant, by its attorney, moved the court for a new trial.

On this day, to wit, the 19th day of May, A. D. 1864, came said plaintiffs, by their attorneys, and filed in said clerk's office their bill of exceptions in said entitled cause; which said bill of exceptions is in the words and figures following, to wit:

41 UNITED STATES OF AMERICA, *Northern District of Illinois:*

In the circuit court.

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher C. Baldwin
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY.

Be it remembered, that on the trial of this cause the plaintiffs, to maintain and prove the issues upon their part, gave in evidence a letter of Paul H. Dennis, who was by defendant then and there admitted to have been, at the date of said letter, the general agent for defendant for the adjustment of damages for freight or property lost or destroyed by defendant while in its custody, and that said letter was written by authority of defendant, said letter being in the words and figures following, viz:

OFFICE OF THE ILLINOIS CENTRAL RAILROAD COMPANY,
Chicago, Oct. 31*st*, 1862.

Woodward, Baldwin & Co., Baltimore:

GENTLEMEN: I send you herewith statement of cotton consigned to
42 you from G. A. & Co., which caught fire and was destroyed while in transit on this road, caused by burning of prairie:

Oct. 28, '62, W. B. 567, car 1,151, W. B. & Co. 34 bales cotton L D.
" " 568, " 55, " 16 " L D.

Respectfully yours,

P. H. DENNIS, *Gen'l Ag't.*

Plaintiff next offered in evidence and read to the jury the deposition of Erich Meyer.

Deposition of Erich Meyer, taken at Chicago, Illinois, before John C. Reiley, notary public, on the seventh day of May, A. D. 1863, on behalf of plaintiffs.

Interrogatory first, by plaintiffs' counsel. What is your name, age, residence, and occupation?

Ans. Erich Meyers; my age is twenty-six; my residence is in Baltimore, Maryland; I am in the employment of the plaintiffs in this suit, engaged in purchasing cotton for them in Memphis, Tennessee.

Int. 2. Who composed the firm of Woodward, Baldwin & Company in the month of October last, and now compose it?

Ans. William Woodward, H. Baldwin, and Christopher C. Baldwin. The same persons compose the firm now and have since that time.

43 Int. 3. In whose employment was you in the month of October and November last, where, and what was the character of your employment?

Ans. In the employment of the plaintiffs, in Memphis, Tennesee, and engaged in buying and shipping of cotton to Baltimore on account of the plaintiffs and for them.

Int. 4th. Did you or not ship any cotton during the latter part of October last, for and on account of the plaintiffs, from Memphis, Tennessee?

Ans. Yes, sir; I shipped some.

Int. 5th. State the date of the last shipment but one during said month of October.

Ans. It was the twenty-fourth of October.

Int. 6th. How much did you ship on the twenty-fourth of October, to whom, and how was the same shipped?

Ans. I shipped fifty bales to Graham, Abel & Co., at Cairo, by the steamer John H. Dickey, to be forwarded to the plaintiffs, at Baltimore, by the said Graham, Abel & Co.

Int. 7. How much did the said fifty bales of cotton weigh?

Ans. The said fifty bales of cotton weighed twenty-four thousand three hundred and seventy-seven pounds; that is to say, there was so much cotton it weighed that nett. This was the nett weight of the cotton that I paid for.

Int. 8. Who owned said cotton and on whose account was the same
44 shipped by you?

Ans. to 8th int. The plaintiffs owned said cotton, and the cotton was shipped for their account.

Int. 9. Did you or not make any invoice of said cotton showing the weight and cost of each of said bales? If yea, annex said invoice or a copy thereof to this your deposition.

Ans. to int. 9th. Yes, I made out an invoice of said cotton, and I annex to my deposition here a copy of the invoice.

Int. 10th. Did said bales of cotton contain any marks? And if yea, what?

Ans. to 10th int. Each bale was marked L. D., and numbered from one to fifty, inclusive.

Int. 11th. What was the quality or grade of that cotton?

Ans. to 11th int. Middling.

Int. 12th. When would said cotton have reached Cairo, Illinois, in due course of transit?

Ans. to 12th int. On the twenty-sixth day of October, A. D. 1862, two days after the shipment.

Int. 13th. Did you ship any other cotton from Memphis on the 24th of October last for and on account of the plaintiffs?

Ans. to int. 13th. No, sir.

Int. 14th. Did you or not forward the plaintiffs samples of the quality or grade of each of said fifty bales of cotton?

Ans. to int. 14th. Yes, sir.

45 Int. 15th. When and how did you forward said samples?

Ans. to 15th int. By Adams Express Company, on the twenty-fourth or twenty-fifth of October last. I don't remember which day.

Int. 16th. Have you examined certain samples of cotton now in the custody of the clerk of the circuit court for the northern district of Illinois, made a part of the deposition of Elijah P. Smith, in this suit?

Ans. to int. 16th. Yes, sir; I examined them to-day, in company of Mr. Roberts, of the firm of Gookins, Thomas & Roberts, counsel for the plaintiffs in this suit.

Int. 17th. State how said samples examined by you to-day compare with those forwarded by you, as before stated, to the plaintiffs.

Ans. to int. 17th. They compared exactly with the same I sent off.

Int. 18th. How do said samples examined by you to-day compare (as to

grade or quality) with said fifty bales of cotton shipped by you on the 24th of October last?

Ans. to int. 18th. According to my recollection these samples compare exactly with the fifty bales sent off by me on the 24th October last, as above stated.

Int. 19th. Were the said fifty bales or any part thereof received by the plaintiffs to your knowledge?

Ans. to int. 19th. So far as I know none of said fifty bales of cotton was received by the plaintiffs.

Cross-examination by Mr. Jewett, for the defendants.

46 Cross-int. 1st. How long have you been in the cotton business?

Ans. to 1st cross-int. Ten months, about.

Cross-int. 2. Is that all your experience in handling cotton?

Ans. to 2nd cross-int. Yes, sir.

Cross-int. 3. Are you a good judge of the different grades and qualities of cotton?

Ans. to 3 cross-int. From my experience I am a good judge of cotton.

Cross-int. 4th. On what boat was that cotton shipped?

Ans. to cross-int. 4th. On the John H. Dickey.

Cross-int. 5th. Through whom did you ship it?

Ans. to cross-int. 5th. Through Dan. Abel & Co.

Cross-int. 6th. Did you get any bill of lading or shipping bill?

Ans. to 6th cross-int. Yes, sir.

Cross-int. 7th. By whom was it signed?

Ans. to cross-int. 7th. By W. G. Cirode, for Dan'l Abel & Co.

Cross-int. 8th. For whom were Dan'l Abel & Co. acting, and in what capacity?

Ans. to cross-int. 8th. So far as my knowledge, Dan'l Abel & Co. did a general forwarding and commission business, and were also agents for the Illinois Central Railroad Company.

Cross-int. 9th. Who was W. G. Cirode, and in what capacity was he acting?

Ans. to cross-int. 9th. I think he was acting as clerk for Dan. Able & Co., and also as their bookkeeper.

Cross-int. 10th. Was this cotton shipped on a through freight from

47 Memphis to Baltimore?

Ans. to cross-int. 10th. The cotton was shipped on a through freight from Memphis to Baltimore.

Cross-int. 11th. With whom did you make the contract for through freight?

Ans. to cross-int. 11th. With Dan. Able & Co.

Cross-int. 12th. For whom did they propose to be acting in making that contract?

Ans. to cross-int. 12th. According to my recollection, for the Illinois Central Railroad Company.

Cross-int. 13th. Was that contract in writing?

Ans. to 13th cross-int. I got a bill of lading of it; that was the contract.

Cross-int. 14th. Will you produce the original bill of lading and contract referred to by you?

Ans. to cross-int. 14th. The said original bill of lading is now in the possession of Messrs. Gookins, Thomas & Roberts, counsel for the plaintiffs, and I hereto annex and make part of my deposition a true copy thereof.

[It is agreed by the attorneys of the respective parties, in my presence, that the copy of the bill of lading referred to by the witness may be read in evidence for and in place of the original on the trial of this cause unless the original is produced.

JOHN C. REILEY, *Notary Public.*]

Cross-int. 15th. Was the freight agreed upon, or any part of it,
48 paid on that cotton?

Ans. to cross-int. 15th. I did not pay any.

Cross-int. 16th. Do you know whether that cotton ever reached Cairo or not?

Ans. to cross-int. 16th. No, sir, I don't.

Cross-int. 17th. When did you leave Memphis first, after shipping that cotton?

Ans. to cross-int. 17th. I believe the latter part of November, and came up to Cairo.

Cross-int. 18th. When after the shipment were you first in Baltimore?

Ans. to cross-int. 18th. About the middle of April, 1863.

Cross-int. 19th. How long have the plaintiffs been in the cotton business to your knowledge?

Ans. to cross-int. 19th. I don't know how long; could not say; but I have known them for six years, and they have been in the cotton business during that time. I mean to say that they have been engaged in the cotton business along with other business during that time. Their regular business is domestic dry-goods.

Re-examined in chief by Mr. Roberts, for plaintiffs.

Int. Was there any other agreement with Dan'l Able & Co. respecting the shipment of said cotton than that contained in said bill of lading?

Answer. There was no other bargain except to be shipped to Graham, Able & Co. at Cairo, and to be forwarded by them.

49 (Answer objected to by defendant's attorney.)

Re-int. Who were Graham, Able & Co., of Cairo?

Answer. I don't know than that they are a forwarding and commission house.

Int. Were you informed at the time of making the said bill of lading with Dan'l Able & Co., who Graham Able & Co., of Cairo, were?

Answer. Not to my recollection.

E. MEYER.

50 Invoice of 50 bales cotton purchased by E. Meyer of sundry persons for ac. and risk of Mess. Woodward, Baldwin & Co., Baltimore, Md.:

L D. 27 bales cotton, (24, 503; 25, 540; 26, 490; 27, 520; 28, 562; 29, 485; 30, 500; 31, 540; 32, 530; 33, 475; 34, 563; 35, 493; 36, 528; 37, 526; 38, 408; 39, 516; 40, 462; 41, 570; 42, 520; 43, 528; 44, 568; 45, 480; 46, 447; 47, 518; 48, 486; 49, 510; 50, 520,) 13,728, 52	$7, 138 56
L D. 16 ditto, (1, 428; 2, 443; 3, 453; 4, 492; 8, 495; 9, 500; 10, 500; 12, 513; 14, 353; 15, 375; 16, 553; 17, 475; 18, 490; 19, 480; 20, 488; 21, 430,) 7,486, 53	3, 967 58
L D. 5 ditto, (5, 453; 6, 455; 7, 505; 11, 495; 13, 515,) 2,423, 54	1, 308 42
	12, 414 56
Less for repairing in Tennesse money	4 50
	12, 410 06

L D. 2 ditto, (22, 385; 23, 355,) 740, 50		$370 06
Permit	25	
Samples p'r express	1 25	
		1 50
		371 50

(U. S. treasury notes.)

Memphis, October 24, '62.

E. MEYER.

51 The foregoing is the copy of the invoice referred to in the deposition of Erich Meyer and in his answer to 9th interrogatory in chief.

JOHN C. REILEY, *Notary Public.*

For ac. E. Meyer:

Shipped by Dan'l Able, forwarding and commission merchants, Bradley Block, foot of Jefferson st., in good order and condition, on board the good steamboat called the John H. Dickey, whereof is master for the present voyage, the following articles, being marked and numbered as below, and are to be delivered without delay, in the like good order and condition, at the port of Cairo, (fire and the unavoidable dangers of the river only excepted,) unto Graham, Able & Co., or to their assigns, he or they paying freight at the rate of ten and 97-100 dollars per 100 lbs. through to Baltimore and charges.

In witness whereof, the owner, master, or clerk of said boat hath affirmed to 5 bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at Memphis, the 24th day of Oct., 1862.

Marked, L D., from 1 to 50. Articles, (50) fifty bales cotton. Weight, ——.

Not accountable for condition, hoops off, or bagging torn, and owners assumes all risk of fire and unavoidable accident en route to destination.

W. G. CIRODE,

52 For DAN. ABLE & CO.,

Ag'ts Ill. Central R. R'd.

For Woodward, Baldwin & Co., Baltimore, Md.

The within is a copy of the bill of lading referred to in the deposition of E. Meyer.

JOHN C. REILEY, *Notary Public.*

We hereby agree that we will, on the part of the defendants, the Illinois Central Railroad Company, in a suit against them now pending in the circuit court of the United States for the northern district of Illinois, in favor of William Woodward, William H. Baldwin, jr., and Christopher C. Baldwin, consent to waive all objection to the time, place, and manner of taking the deposition of Erich Meyer on the part of the plaintiffs in said cause, and consent that the same may be read on the trial of said cause, subject to all legal objections to the competency of the witness and all exception to interrogatories and answers, and this stipulation shall be annexed to and made a part of said deposition.

GOOKINS, THOMAS & ROBERTS,
Att'ys for Pl'ffs.

McALLISTER, JEWETT & JACKSON,
Att'ys for Def't.

53 The plaintiffs, before the reading thereof to the jury, excepted to the admissibility of all that portion of the cross-examination of said Meyer which relates to the terms and conditions of the contract of shipment otherwise than they are contained in the bill of lading. The court reserved its decision thereon until defendant should offer the bill of lading in evidence, ruling that it would then be competent, and allowing the deposition to be read to the jury. To the decision of the court admitting the above-mentioned portion of said cross-examination excepted to by plaintiffs to be read to the jury, plaintiffs then and there excepted.

Plaintiffs then offered in evidence and read to the jury the depositions of Elijah P. Smith, Augustus F. Siever, James E. Brown, and David L. Maulsly, taken at Baltimore.

Depositions of Elijah P. Smith, Augustus F. Sievers, James E. Brown, and David L. Maulsley, taken at Baltimore, Maryland, on the sixth day of March, A. D. 1863, before Andrew S. Ridgely, commissioner on behalf of plaintiffs.

Dep. of E. P. Smith.

I reside in Baltimore City and State of Maryland. I am a clerk with Woodward, Baldwin & Co., the plaintiffs in this cause; have been in their employ as such for eleven years and upwards, and have resided in Baltimore City all that time, and do now reside there.

54 (The counsel for the plaintiffs here exhibited to the witness a package of cotton and prayed that the same might be annexed hereto, marked on the outer wrapper "L D, No. 1–50, 50 bales," and asked the witness what the said package was.)

The said witness, answering, says: The package shown me contains the identical samples sent to Woodward, Baldwin & Co., the plaintiffs in this course, from Memphis, Tennesse, via Cairo, to Baltimore, and represent fifty bales of cotton which were shipped from Memphis aforesaid for said Baltimore on the 24th October, 1862, and said package contains the identical samples of the fifty bales of cotton said to have been burned on the Illinois Central Railroad, the burning of which is the subject of the suit in which this deposition is made.

(The said package is hereunto annexed, marked as aforesaid, to be returned as part of this deposition.)

ELIJAH P. SMITH.

Witness: AND'W S. RIDGELY, *U. S. Com.*

And the said Augustus F. Seever, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the plaintiffs, makes oath, deposes, and says as follows, to wit:

55 I have resided in Baltimore City and State of Maryland for twenty years, and do still reside there. I am a cotton broker and have been such for some sixteen years. I have examined the package of cotton referred to in the deposition of Elijah P. Smith, just taken in this case, marked "L D, No. 1–5, 50 bales," and grade the samples contained in said package as "middling." The value of the cotton represented by said samples in the Baltimore market on the 20th November, 1862, was 70½ cents per pound; on the 22d day of Nov., 1862, it was worth in said market 68 cents; and on the 26th day of November, in the same market, it was worth 66½ cents; on the 28th day of November, in same market, it was worth 66 cents. On 1st, 2nd, 3rd, and 5th December, 1862, it was worth, same market, 68½ cents per pound.

AUGUSTUS F. SEEVERS.

Witness: AND'W S. RIDGELY, *U. S. Com'r.*

And the said James E. Brown, being by me first carefully examined and cautioned, and duly making his solemn affirmation according to law to testify the whole truth, and being examined on behalf of the plaintiffs, makes oath, deposes, and says as follows, to wit:

56 I reside at present in the city of Baltimore, Maryland, and have resided there my whole life. I am salesman for Adolphus C. Schoefer and have had some twelve years' experience in the matter of cotton. I have examined the samples contained in the package now exhibited me, marked "L D, No. 1–50, 50 bales," referred to in the deposition of Augustus F. Seevers and Elijah P. Smith, and grade the same as "middling." The cotton represented by said samples was worth between the 20th November and 5th day of December, 1862, in the Baltimore market, on an average, 67½ cents per pound.

JAMES E. BROWN.

Witness: AND. S. RIDGELY, *U. S. Com'r.*

And the said David L. Maulsley, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the plaintiffs, makes oath, deposes, and says as follows, to wit:

I reside in the city of Baltimore and State of Maryland, and have resided there for twenty-one years. I am the clerk of Woodward, Baldwin & Co., the plaintiffs in this suit.

The witness being shown the samples of cotton referred to in the
57 depositions of Brown, Seevers, and Smith, further deposes and says: The samples of cotton now shown me are the same identical samples of cotton which were sent from Memphis, Tennesse, to represent fifty bales of cotton which were shipped from Memphis, via Cairo, to Woodward, Baldwin & Co., Baltimore, Maryland, October 24th, 1862, and which said fifty bales of cotton are said to have been burned on the Illinois Central Railroad and are the subject matter of this suit. I have been in the employ of Woodward, Baldwin & Co. for six years. I know that they have received several lots of cotton from Memphis, Tennesee, by the same route, and I know that cotton shipped as aforesaid on October 24th, 1862, ought in the ordinary and usual course of transportation, allowing even for the unsettled state of the country, to have arrived in Baltimore between Nov. 20th and the 5th December, 1862.

DAVID L. MAULSLY.

Witness: AND. S. RIDGELY, *U. S. Com'r.*

It was here agreed between the respective counsel for plaintiffs and defendants that there was no market price for cotton at Chicago, Illinois, or Cairo, Illinois, in October, November, or December, 1862, there being none sold or for sale at said places during the said times; that the value of the said cotton at the said places would be the market value thereof at
58 the city of Baltimore, Maryland, at said times, less the freight or cost of transportation from said places to Baltimore aforesaid; that the freight from Memphis, Tennesee, to Cairo, Illinois, was 20 cents per hundred pounds, and from Cairo to Chicago 63 cents per hundred pounds, and from Chicago to Baltimore $2 14-100 per hundred pounds.

Plaintiffs here rested their case.

Defendant then offered in evidence and read to the jury the original bill of lading, which is in the words and figures following:

Shipped by Dan. Able for ac. E. Meyer, forwarding and commission merchant, Bradley Block, foot of Jefferson, st., in good order and condition, on board the good steamboat called the John H. Dickey, whereof is

master for the present voyage, the following articles, being marked and numbered as below, and are to be delivered without delay, in the like good order and condition, at the port of Cairo, (fire and the unavoidable dangers of the river only excepted,) unto Graham, Able & Co., or to their assigns, he or they paying freight at the rate of two and 97-100 dollars per 100 lbs. through to Baltimore and charges.

In witness whereof, the owner, master, or clerk of said boat hath affirmed to 5 bills of lading, all of this tenor and date, one of which being ac-
59 complished the others to stand void.

Dated at Memphis, the 24 day of Oct., 1862.

Marks, L D, from 1 to 50. Articles, (50) fifty bales cotton. Weight, ——. Not accountable for condition, hoops off, or bagging torn, and owner assumes all risk of fire and unavoidable accidents en route to destination.

W. G. CIRODE
For DAN'L ABLE & CO.,
Ag'ts Ill's Central R.R'd.

For Woodward, Baldwin & Co., *B*altimore, Md.

Invoice of 50 bales cotton, purchased by E. Meyer of sundrie persons for ac. and risk of Mess. Woodward, Baldwin & Co., Baltimore, Md.

	L D. 27 bales cotton, (24, 503; 25, 540; 26, 490; 27, 520;		
60	28, 562; 29, 485; 30, 500; 31, 540; 32, 530; 33, 475; 34, 563; 35, 493; 36, 528; 37, 526; 38, 408; 39, 516; 40, 462; 41, 570; 42, 520; 43, 528; 44, 508; 45, 480; 46, 447; 47, 518; 48, 486; 49, 510; 50, 520,) 13,728, 52	$7, 138	56
L D.	16 ditto, (1, 428; 2, 443; 3, 453; 4, 492; 8, 493; 9, 500; 10, 500; 12, 513; 14, 353; 15, 395; 16, 553; 17, 475; 18, 490; 19, 480; 20, 488; 21, 430,) 7,486, 53	3, 967	58
L D.	5 ditto, (5, 453; 6, 455; 7, 505, 11, 495; 13, 515,) 2,423, 54	1, 308	42
		12, 414	56
	Less for repairing	4	50
	In Tennesee money	12, 410	06
L D.	2 ditto, (22, 385; 23, 355,) 740, 50	370	00
	Permit 25		
	Samples per express 1 25	1	50
	U. S. treasury notes	371	50

Memphis, Oct'b'r 24, '62.

E. MEYER.

61 Plaintiffs previous to the reading objected to the admissibility thereof in evidence, upon the ground that the same was discharged at Cairo, Illinois, it being a contract for the shipment of the cotton from Memphis, Tennesee, to Cairo, Illinois; and the testimony proved that the cotton was destroyed on defendant's railroad while in transit over the same, caused by burning of the prairie; but the court overruled the objection and allowed the bill of lading to be read in evidence; to which ruling of the court the plaintiffs then and there excepted. Defendants then offered in evidence the deposition of W. Y. Cyrode. Plaintiffs objected to the reading of

said deposition so far as the same related to the terms and condition of the contract of shipment otherwise than as they were contained in said bill of lading. The court overruled the objection and permitted the deposition to be read in evidence to the jury.

To the reading of the above-mentioned portion of the said deposition objected to by plaintiffs the plaintiffs then and there excepted; said deposition being as follows:

Deposition of William Y. Cyrode, taken by agreement on the 2nd day of June, A. D. 1863, at Chicago, Illinois, on behalf of defendant, before John C. Reily, notary public.

62 William Y. Cirode, a witness produced and sworn on behalf of the defendants, being by me first duly cautioned and sworn, on his oath deposeth and says:

My name is William Y. Cirode; my age is about twenty-seven years; I reside in Memphis, Tennesee; I am now connected with the house of Lacy, Abel & Co.

Interrogatory. Where were you residing and what was your business in October, 1862?

Ans. I was residing in Memphis, Tennesee; in the employ of Daniel Able & Co. at that time.

Int. 2. In what capacity were you employed at that time?

Ans. I was chief clerk of the establishment.

Int. 3. Have you ever heard of the plaintiffs, Woodward, Baldwin & Company, of Baltimore, Maryland?

Ans. I have heard of them in the way of having bills of lading for cotton made out for them.

Int. 4. In the fall of 1862 did you know at Memphis a man by the name of E. Meyer?

Ans. Yes, sir.

Int. 5. Did you do any business with him at Memphis?

Ans. Yes, sir.

Int. 6. When did you commence to do business with him, and what was the business?

Ans. In September, 1862; shipping cotton for him.

63 Int. 7. To whom was the cotton shipped by him at Memphis consigned?

(Question objected to by plaintiffs' attorney, Mr. Roberts.)

Ans. It was shipped generally to Woodward, Baldwin & Co. or to the order of Woodward, Baldwin & Co.

Int. 8. Was there any cotton shipped by him to, or to the order of, any other party than Woodward, Baldwin & Co. to your knowledge?

Ans. I don't know of any other, sir.

Int. 9. In the months of September and October, 1862, who were the agents of the Illinois Central Railroad Company at Memphis, if they had any agent there?

Ans. Dan. Able & Co., the firm with which I was connected.

Int. 10. Examine the bill of lading now shown you, and state whether you have seen it before; by whom it was made out, and under what circumstances.

Ans. I have seen it before. It was made out by the shipping clerk of the house of Dan. Able & Co., and signed by me for Dan. Able & Co., as near as I can remember. I don't know about this particular bill of lading, what were the circumstances attending it. When Mr. E. Meyer wished to make a shipment of cotton he would generally come in and ask the rate through

to Baltimore or New York, and after giving him the rate he would
64 come in the next day, about, and give us dray receipts or dray tickets for the amount of cotton he shipped that day; at the same time asking us to give him through bills of lading to Baltimore or New York, as the case might be. Upon receiving those dray receipts or tickets from him signed by the clerk of the steamer on which the cotton was shipped I then gave him through bills of lading for his cotton.

(Question and answer objected to by plaintiffs' attorney present, Mr. Roberts.)

Int. 11. State whether shipments of cotton had been made by Mr. Meyer upon contracts or bills of lading similar to the one referred to in the last interrogatory prior to the twenty-fourth day of October, 1862.

(Question objected to by plaintiffs' attorney.)

Ans. Yes, sir.

Int. 12th. After the execution of the bill of lading state what was done in respect to the cotton by Dan. Able & Co., if anything.

Ans. Nothing that I know of, except that we took a bill of lading from the steamboat for the cotton to Cairo, there to be delivered to Graham, Able & Co. by the steamboat upon their paying the freight, one dollar per bale to Cairo, to the steamer.

65 Int. 13th. Have you in your possession the original bill of lading executed by the clerk or proper officer of the steamboat, for the cotton referred to in the through bill of lading mentioned in the foregoing interrogatories?

Ans. Yes, sir, I have.

Int. 14th. In what is it contained?

Ans. It is contained in the bill of lading book of Daniel Able & Co., which I have brought here from Memphis, and a part of the record of their business.

Int. 15th. Produce the said original bill of lading; or if not at liberty to do so, produce a copy thereof and attach it to your deposition so marked as to identify it.

Ans. I am not at liberty to take the original from the book, and I produce a copy. The paper hereto attached marked Exhibit A is a true and correct copy of said original.

Int. 16th. By whom was that bill of lading from the steamboat procured?

Ans. It was procurred by the shipping clerk of the house of Dan'l Able & Co. under my orders.

Int. 17th. Was this usually done in case of shipments for Mr. Meyer before or after the execution to him by Able & Co. of through bills of lading?

66 Ans. Sometimes before and sometimes after. It depended entirely upon Mr. Meyer's hurry that he was in.

(Question and answer objected to by pl'ffs' attorney.)

Int. 18th. State whether in all cases you used the same form, or substantially the same form, of bill of lading for the boats to sign that had been executed to Meyer or other parties to whom you had given through contracts.

(Objected to by pl'ff's attorney.)

Ans. Yes, sir, we did.

Int. 19th. Were they or not all made out at the same time—both those to be executed by you and those to be executed by the boat?

Ans. They were made out, all of them, at the same time, and were duplicates of one another.

In. 20th. In making these through contracts for whom were Able & Co. acting, and in what capacity?

Ans. As agents of the Illinois Central Railroad Company at Memphis and for the company.

Int. 21st. Who, if any one, gave directions in the case of the shipments of cotton by Meyer on the 24th of October, 1862, in respect to the party in whose hands the cotton should come at Cairo? And state why the name of Graham, Able & Co. was used.

67 (Objected to by plaintiffs' attorney.)

Ans. No one gave any directions. The house of Graham, Able & Co. was the one in which all the business of Dan. Able & Co. was transacted at Cairo, and I have understood that they were the transfer agents of the railroad company at Cairo, and that was the reason why the shipments were so made, as I so understood.

(Ans. objected to.)

Int. 22nd. Who made the agreement as to the amount of boat's freight or price for carriage on this cotton shipped on the 24 October, 1862?

Ans. Dan. Able & Co.

Int. 23rd. State, if you can, how many shipments of cotton had been made by E. Meyer to Woodward, Baldwin & Co. through the house of Dan'l Able & Co. prior to the 24th day of October, 1862.

Ans. To my knowledge, sir.

Int. 24th. When was the first?

Ans. About the 11th of September, 1862.

Int. 25th. Have you in your possession duplicates of the bills of lading or contracts given to Mr. Meyer for those several shipments. If yea, produce the same to be made exhibits to your deposition, or if you are not at liberty to produce the originals, will you produce the duplicates, and attach the same to your deposition?

(Objected to by plaintiffs' attorney.)

68 Ans. I have the originals of the boat's bills of lading for the several shipments made by Mr. Meyer prior to Oct. 24, 1862, in the bill of lading book of Dan'l Able & Co., which I am not at liberty to cut out from the book. The papers now produced and attached to this my deposition as exhibits, respectively, B, C, D, E, F, and G are correct copies of said originals. The contracts given to Mr. Meyer for said several shipments were exact duplicates of said bills of lading, excepting that they were signed by me for Dan'l Able & Co., agents of the Illinois Central Railroad Company, and except also that in some of them the word freight or other words designating the boat's freight one dollar per bale, did not occur in the originals given to Mr. Meyer.

Int. 26th. Whose are the names signed to the bills of lading, copies of which are attached to deposition in answer to last interrogatory?

Ans. The captains and clerks of the different steamboats that took the cotton from Memphis to Cairo.

Int. 27th. Who attended the getting of those signatures?

Ans. The shipping clerk of the house of Dan'l Able & Co.

Cross-examination by Mr. Roberts, for plaintiffs.

69 Cross-int. 1st. If the bill of lading in question given by you for Dan'l Able & Co., dated Oct. 24, 1862, was intended as a bill of lading for the shipment of the cotton through to Baltimore, why was the port of Cairo inserted instead of Baltimore?

Ans. It was customary for us to ship by steamer from Memphis to Cairo, consequently we had to insert in that bill of lading Cairo as the port at which the freight was to be delivered by the steamer. We had no regular railroad blank bills of lading, consequently we used the one we made all our shipments by from Memphis, and it was understood by Mr. Meyer and ourselves that it was a through receipt to Baltimore, and accepted by him accordingly.

(The latter part of the answer as to the understanding, objected to by plaintiff as not responsive to the interrogatory.)

Cross-int. 2nd. Did the railroad company deliver to Graham, Able & Co., at Cairo, a railroad bill of lading for the cotton in question?

Ans. I don't know, sir; not to my knowledge. I have no means of knowing.

Cross-int. 3. Was it the custom of the railroad company at Cairo
70 to make railroad bills of lading, and deliver to Graham, Able & Co. for the cotton shipped on account of the plaintiffs?

Ans. I don't know, sir.

Cross-int. 4th. What was the business of Dan. Able & Co. at Memphis during the month of October, 1862?

Ans. They were grocers, commission and forwarding merchants, and the agents of the Illinois Central Railroad Company at that time.

Cross-int. 5. What was the character or scope of their agency for the Illinois Central Railroad Company at that time?

Ans. I can't say, sir.

Cross-int. 6th. What was the business connection, if any, of Dan'l Able & Co., of Memphis, and Graham, Able & Co., of Cairo?

Ans. The houses were entirely separate and distinct. Captain Able was connected with both houses, but no other parties were connected.

Cross-int. 7th. Who composed the firm of Dan. Able & Co. and Graham, Able & Co., respectively, at that time?

Ans. The firm of Dan. Able & Co. was composed of Dan. Able, Alfred T. Lacey, and K. L. McGhee. I don't know who composed the other firm, but I know from hearsay that Dan'l Able is a member of that firm.

71 Cross-int. 8th. What was the business of Graham, Able & Co. at Cairo at that time?

Ans. I don't know what it was, except from hearsay. I have heard that they were transfer agents for the Illinois Central Railroad Company.

Cross-int. 9th. Did you in person make the bargain with Meyer for the freight of the cotton in question?

Ans. I did.

Cross-int. 10th. Did you intend that the bill of lading of October 24th aforesaid, should contain the terms and conditions of the shipments of the cotton?

Ans. Yes, sir.

W. Y. CIRODE.

The foregoing deposition of W. Y. Cirode subscribed and sworn before me this second day of June, A. D. 1863.

JOHN C. REILEY, *Notary Public.*

EXHIBIT A.

For ac. E. Meyer.

Shipped by Dan'l Able & Co., in good order and condition, on board of the good steamboat called the John H. Dickey, whereof is mas-
72 ter for the present voyage, the following articles, being marked and numbered as below, and are to be delivered without delay, in the like good order and condition, at the port of Cairo, (fire and the unavoidable dangers of the river only excepted,) unto Graham, Able & Co. or assigns, he or they paying freight at the rate of two and 97-100 dolls. per hundred lbs. through to Baltimore and charges.

In witness whereof, the master or clerk of the said steamboat hath affirmed to 5 bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated at Memphis, the 24th day of Oct., 1862.

L D, from 1 to 50, (50) fifty bales of cotton.

Boat's freight $1 00 per bale. Not accountable for condition, hoops off, or bagging torn, and owner assumes all risk of fire and unavoidable accidents en route to destination.

H. J. EATON.

For Woodward, Baldwin & Co., Baltimore, Md.

73 It is hereby stipulated and agreed that the within is a true copy of the original bill of lading referred to by the witness W. Y. Cirode, in his answer to the 13th and 14th direct interrogatories, and that the same may be used as evidence in place of the original.

Chicago, June 2d, 1863.

McALLISTER, JEWETT & JACKSON, *Att'ys for Def't.*
GOOKINS, THOMAS & ROBERTS, *P. Q.*

EXHIBIT B.

For ac. E. Meyer.

Shipped by Dan'l Able & Co., in good order and condition, on board of the good steamboat called the Edward Walsh, whereof Carroll is master for the present voyage, the following articles, being marked and numbered as below, and are to be delivered without delay, in the like good order and condition, at the port of Cairo, Ills., (fire and the unavoidable dangers of the river only excepted,) unto Graham, Able & Co. or their assigns, he or they paying freight at the rate of two dollars per 100 lbs. through to New York.

In witness whereof, the master or clerk of the said steamboat hath affirmed to 5 bills of lading, all of this tenor and date, one of which being ac-
74 complished the others to stand void.

Dated at Memphis, the 11th day of Sept., 1862.

91. J N G, 4-95 NE. W. (95) ninety-five bales of cotton.

Boat's freight $1 per bale. The owner assumes all risk of fire and unavoidable accidents en route to destination.

JNO. W. CARROLL, *Master.*

To E. Meyer, New York, or to the order of Woodward, Baldwin & Co., of Baltimore, Md.

EXHIBIT C.

For ac. E. Meyer.

Shipped by Dan. Able & Co., in good order and condition, on board of the good steamboat called the Rowena, whereof Mason is master for the present voyage, the following articles, being marked and numbered as below, and are to be delivered without delay, in the like good order and condition, at
75 the port of Cairo, (fire and the unavoidable dangers of the river only excepted,) unto Graham, Able & Co. or assigns, he or they paying freight at the rate of two and 25-100 dollars per 100 lbs. through to New York.

In witness whereof, the master or clerk of the said steamboat hath affirmed to 6 bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated at Memphis, the 27th day of Sept., 1862.

F I N E, 1 to 13, (13) thirteen bales cotton.

BLOCK.

Boat's freight $1 per bale. Boat not responsible for condition, hoops off, or bagging torn, and owner assumes all risk of fire and unavoidable accidents en route to destination.

To order at New York of Woodward, Baldwin & Co., Baltimore, Md.

76 EXHIBIT D.

For ac. E. Meyer.

Shipped by Dan'l Able & Co., in good order and condition, on board of the good steamboat called the Prairie Rose, whereof is master for the present voyage, the following articles, being marked and numbered as below, and are to be delivered without delay, in the like good order and condition, at the port of Cairo, (fire and unavoidable dangers of the river only excepted,) unto Graham, Able & Co. or assigns, he or they paying freight at the rate of two dollars and twenty-five cents per 100 lbs. through to New York.

In witness whereof, the master or clerk of the said steamboat hath affirmed to 5 bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated at Memphis, the 4th day of October, 1862.

F I N E, from 14 to 21, (8) eight bales cotton.

Boat's freight $1 per bale. Not accountable for condition, hoops off, or bagging torn, and owner assumes all risk of fire and unavoidable accidents en route to destination.

COX, *Capt.*

To order of Woodward, Baldwin & Co., Baltimore, Md.

77 EXHIBIT E.

For ac. E. Meyer.

Shipped by Dan'l Able & Co., in good order and condition, on board the good steamboat called the John H. Dickey, whereof Musselman is master for the present voyage, the following articles, being marked and numbered as below, and are to be delivered without delay, in the like good order and condition, at the port of Cairo, (fire and the unavoidable dangers of the river only excepted,) unto Graham, Able & Co. or assigns, he or they paying freight at the rate of two dollars and twenty-five cents per 100 lbs. through to New York.

In witness whereof, the master or clerk of the said steamboat hath affirmed to 5 bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated at Memphis, the 9th day of October, 1862.

E F M, (90) ninety bales cotton.

H. J. EATON.

Not accountable for condition, hoops off, or bagging torn, and owner assumes all risk of fire and unavoidable accidents en route to destination.

To order of Woodward, Baldwin & Co., Baltimore, Md.

78 EXHIBIT F.

For ac. E. Meyer.

Shipped by Dan'l Able & Co., in good order and condition, on board of the good steamboat called the J. H. Dickey, whereof is master for the present voyage, the following articles, being marked and numbered as below, and are to be delivered without delay, in the like good order and condition, at the port of Cairo, (fire and the unavoidable dangers of the river only excepted,) unto Graham, Able & Co. or assigns, he or they paying freight at the rate of two dollars and fifty-seven cents per 100 lbs. through to Baltimore.

Dated at Memphis, the 17th day of October, 1862.

In witness whereof, the master or clerk of the said steamboat hath affirmed to 5 bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated at Memphis, the 17th day of October, 1862.

P R, 1 to 19, (19) nineteen bales cotton.

Boat's freight $1 00 per bale. Not accountable for condition, hoops off, or bagging torn, and owner assumes all risk of fire and unavoidable accidents en route to destination.

GEO. K. EATON.

To Woodward, Baldwin & Co., Baltimore.

79 EXHIBIT G.

For ac. E. Meyer.

Shipped by Dan'l Able & Co., in good order and condition, on board of the good steamboat called the Geo. W. Graham, whereof Bowen is master for the present voyage, being marked and numbered as below, and are to be delivered without delay, in the like good order and condition, at the port of Cairo, (fire and the unavoidable dangers of the river only excepted,) unto Graham, Able & Co. or assigns, he or they paying freight at the rate of two dollars and thirty-seven cents per 100 lbs. through to Baltimore.

In witness whereof, the master or clerk of the said steamboat hath affirmed to 5 bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated at Memphis, the 19th day of Oct., 1862.

P R, (32) thirty-two bales cotton.

THOMAS H. WHITE.

Freight $1 00 per bale. Not accountable for condition, hoops off, or bagging torn, and owner assumes all risk of fire and unavoidable accident en route to destination.

To Woodward, Baldwin & Co., Baltimore, Md.

80 United States circuit court for the northern district of Illinois.

WILLIAM WOODWARD *et al.*
vs.
ILLINOIS CENTRAL RAILR'D Co.

It is hereby stipulated and agreed by the parties that the bill of lading or contract referred to in the 10th direct interrogatory and the answer thereto of the deposition of W. Y. Cirode hereto attached is the original bill of lading or contract, now in possession of Messrs. Gookins, Thomas & Roberts, pl't's attorneys, a copy of which is attached to the deposition of E. Meyer, heretofore taken by the said plaintiffs in this cause.

Chicago, June 2d, 1863.

GOOKINS, THOMAS & ROBERTS, *P. Q.*
McALLISTER, JEWETT & JACKSON.

United States circuit court for the northern district of Illinois.

WILLIAM WOODWARD *et al.*
vs.
ILLINOIS CENTRAL R.R. Co.

81 It is hereby stipulated and agreed that the said defendant may take the deposition of W. Y. Cirode, at the office of its attorneys, Messrs. McAllister, Jewett & Jackson, before John C. Reiley, esq., notary public, commencing at eleven o'clock a. m. of the 2d day of June, A. D. 1863, the

said plaintiffs hereby waiving any and all notice of the taking of said deposition, and that said deposition may be used and read as evidence on the trial of said cause as though taken upon full and legal notice.

Chicago, June 2d, 1863.

GOOKINS, THOMAS & ROBERTS, *P. Q.*
McALLISTER, JEWETT & JACKSON,
Att'ys for Def't.

82 Defendants then rested their case, and thereupon plaintiff in rebuttal offered and read in evidence the depositions of A. H. Irvine, A. J. Carle, H. Watson Webb, N. Smallenberg, J. H. Luftkin, Charles Scudder, S. B. Gault, respectively, taken at Cairo, whose testimony tended to prove that Graham, Able & Co. were not the agents of the defendant, but general commission and forwarding merchants at Cairo aforesaid.

Plaintiffs then, by consent of the defendant, read in evidence the reporter's notes of the testimony of Isaac Simmons, as reported at the October term, 1863, of this court.

83 Isaac Simmons, called on behalf the plaintiff, being first duly sworn, was examined in chief by Mr. Roberts, and testified as follows:

Int. Will you please state to the court and jury whether or not about December, 1862, you went to Cairo, and for what purpose, at whose instance, and whether you saw Mr. Musson, and who this Mr. Musson was, and whose employment he was in, and state your conversation with him?

Ans. About the 19th December, 1862, at the instance of your firm, I went to Cairo specially with a view of ascertaining whether there had been a receipt taken from the Illinois Central Railroad Company by Graham, Able & Co. for these fifty bales of cotton that had been burned, and if so to get a copy thereof. On arriving there I saw Mr. Graham, who was one of the firm Graham, Able & Co., and upon asking him if such a receipt had been given he said that it had; that they had received one and he had the original in his office, (being at his dwelling-house that I saw him;) that he would have a copy of it prepared for me and I could have it. He requested his chief clerk, Mr. Hammond, to have that copy prepared, and Mr. Hammond, whom I saw, told me that he would send it to me the next morning
84 at the hotel that I was stopping at. Next morning, however, I started to go to the office of Graham, Able & Co., and on the way I met Mr. Graham. I told him I had not received a copy. We were then near his office; he said he would run up into his office, and if they had made a copy he would bring it to me. I waited till his return. He then said that Mr. Musson had been there and told the clerks not to let me have a duplicate of their receipt. He, however, said he did not know why I should not have one, and he said "let us go and hunt up Mr. Musson." We went, thereupon, to his office, and found him. Mr. Graham introduced me to him, and then left us, saying that I had some business that I wished to talk with him about. Mr. Musson asked what I wanted. I told him I had come to receive a copy of the receipt, if such had been given. He said he supposed it was the same affair about which some letters had been laid before him some days previously. I told him that Gookins, Thomas & Roberts had written and telegraphed to Graham, Able & Co., as agents of Woodward, Baldwin & Co., to know about this receipt, and if it had been given to have a copy sent to them. After waiting some days Messrs. Gookins, Thomas & Roberts had received a letter from him saying that this correspondence had been laid before him,
85 and he referred the matter and Messrs. Gookins, Thomas & Roberts to Mr. Dennis, an agent in the employ of the railroad company. Mr. Thomas and myself called upon Mr. Dennis. He referred Mr. Thomas to Mr. Douglas. We went there and both saw the whole correspondence on

the letters of this firm. He said that he supposed these letters had been sent to him because he had been in the habit of looking after the interests of Dan. Able & Co., in Cairo, and that as to Graham, Able & Co. the impression had gone abroad that they were the agents of the railroad company, but that this really were not so. He then said that if he could see a copy of the bill of lading given at Memphis he could judge better whether I should have a copy of the receipt or not. I told him that I did not wish any receipt if none had been given; my object was to know if one had been given in a proper place and at a proper time; if so, to get a copy of it. He asked me if I had the bill of lading given at Memphis, or if I had seen it. I told him yes. He then asked me to go with him to Graham, Able & Co.'s office. He then went on and I went in search of Mr. Graham, who, I understood to say, he was going to the hotel when he left us. Not finding him there I went to the office and met Mr. Musson, and we went in together. We then saw Mr. Hammond, who had been represented as the chief clerk to me, and Mr. Hughes, whom I understood was the person that received goods from
86 the boats and delivered them to the railroad company. I asked Mr. Hughes if he had received the cotton. He said he had, and turned to a book, called the shipping book, I believe, of the office, in which he showed me the entries of this cotton, such a number, L D, 50 bales, steamer John H. Dickey, such a date, from Memphis, for whom it was sent, and sundry charges. Mr. Hughes said then that there had been no receipt; he had not taken any receipt from the railroad company. Mr. Hughes handed Mr. Musson a copy of the bill of lading given at Memphis. Mr. Musson read it over, and, after making sundry remarks upon it, he asked for some forms of receipt, such as were given by the railroad company, and after writing some time he presented two copies, two of these forms filled up, and then he told me that Graham, Able & Co. might take one of these receipts; they were entitled to one as they had not received one; they might take one of these if they chose and give me a copy of it; the other he put in his pocket. I read it over and told him that I protested against his offering such a receipt at that time, purporting to be of the date of 26th October, it then being the 21st of December, and under the circumstances I did not think he ought to give it, and as the agent of Woodward, Baldwin & Co. I protested against
87 these gentlemen receiving it. I repeated that, and stated that in the presence of these gentlemen, Mr. Hughes and Mr. Hammond, I protested against it. Mr. Musson then threw one down upon the table, and put the other in his pocket; he then said that he must leave, it was near car time.

Int. Who was Mr. Musson?

Ans. He was represented to me as the agent of the Illinois Central railroad at Cairo.

Mr. Roberts. I have given notice to the defendants in this case to produce the paper which Mr. Musson had.

Mr. Jewett. I have never seen that paper.

Int. Did you make any copy of that paper which Mr. Musson sought to give to Graham, Able & Co.?

Ans. Well, I did not, at that moment, while in the office there, make a copy of it, but I suppose it was not twenty minutes after that, certainly not half an hour, that I was in the car and on my way back, and having as well as I could impressed the bill of lading upon my mind, I wrote it down in the car, then wrote it off more fully on my return to Chicago.

Int. Have you a copy of that with you?

Ans. I think I have a copy.

Int. Was that a printed form Mr. Musson used?

88 Ans. Yes, sir.

Int. I will ask you to produce that.

(Witness produced the printed form.)

Mr. Roberts. We offer that printed form in evidence.

(Objected to on the ground that it was not the original paper and at most could only be used to refresh the witness's memory. Objection overruled, on the ground that it was competent in connection with the witness's statement. To which ruling counsel for defendants then and there excepted.)

Int. Was that in the name of Graham, Able & Co., or Able & Co.?

Ans. I do not distinctly recollect which it was; it was one or the other. The firm had been changed just previous to that, and I could not call to mind which firm it was that was used.

The court. In relation to this last point I do not want any misunderstanding. I understand that the witness says that he examined the paper carefully; that in a short time afterwards, when he was on the cars, he wrote down his recollection of the paper and that he states now that this is the copy which he wrote at that time.

89 Mr. Gookins. No, sir; it was a printed form that he had and he had only to fill up that written portion of it, and when he got here he wrote what he understood to be that written portion.

Cross-examined by Mr. McAllister.

Int. Do you recollect that portion which you claim that you wrote down as a copy as well now as you did at that time?

Ans. I have the same recollection of it now that I had then.

(Mr. McAllister. We object to his giving that memorandum in evidence. Objection overruled; to which ruling counsel for the defendants then and there excepted.)

91 Plaintiffs then offered evidence which tended to prove that defendant had been guilty of negligence in the transportation of the cotton in and along its railroad, and that the cotton was destroyed by fire by and through such negligence, and that defendants were negligent in efforts to save the cotton after it took fire, and that by reasonable diligence a large portion might have been saved after it caught fire. And plaintiffs then rested their case. Defendants then offered Robert Forsyth as a witness, who testified as follows:

Robert Forsyth, called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. Jewett, and testified as follows:

Int. What is your business?

Ans. Freight agent.

Int. For what company?

Ans. General freight agent of the Illinois Central railroad.

Int. How long have you been in that position?

Ans. Since 1856, sir.

Int. How long have you been connected with railroads?

Ans. About fifteen years, directly; in that neighborhood.

92 Int. What was your business previous to being in your present office?

Ans. I have always been in the transportation all my life; part of the time superintendent of the Adams Express.

Int. Have you been on steamboats?

Ans. Yes, sir; from Pittsburg to Lewisburg and St. Louis.

Int. Have you had any experience in the carriage of cotton?

Ans. Well, more particularly since I was connected with the Illinois Central, the last eight years.

Int. Have you been familiar with the usage of other companies in the carriage of cotton?

Ans. Yes, sir, I have.

Int. Where?

Ans. At the Memphis and Charleston, Baltimore and Ohio, Pennsylvania Central, Michigan Central, Michigan Southern, and the Illinois Central.

Int. Do all those carry cotton?

Ans. Yes, sir, all of them.

Int. What is the general usage of railroad companies, as far as you have observed it, in respect to the transportation of cotton?

Ans. In the south it is almost entirely platform cars—in fact, I never saw a bale carried in any other way; but in the north it is carried both in box cars and flat cars, principally flat cars. I believe I originated it.

93 Our house cars were not equipped for that purpose and we were pretty well supplied with flat cars, and I adopted that from my experience on other roads.

Int. How is it carried on steamboats?

Ans. On the guards on deck.

Int. With or without covering?

Ans. Without covering.

Int. What are the reasons for carrying it in that way?

Ans. They consider it safer. If it catches fire it is easier put out or thrown overboard. If it has not started much they can put it out, but if it has they dump it right in the river.

Int. From your experience and observation which method is the safest?

Ans. My experience goes to prove that we have lost less cotton in carrying it on flat cars than we did in house cars.

Int. Can you give any reason for that?

Ans. Yes, sir. The house cars cannot be made sufficiently tight to prevent sparks getting in, and then the flame would smoulder and cannot be seen, while on the flat cars it can be inspected the train all over.

Int. How long has it been the custom and usage of the Illinois Central railroad to carry cotton in this way?

Ans. The last four or five years; five years, I think.

Int. Has it been ever since it commenced cotton transportation?

Ans. Yes, sir. We had some cotton before that, but we had made

94 no effort to secure it.

Int. Who were the agents of the Illinois Central railroad at Memphis in 1862?

Ans. Dan. Able & Co.

Int. By whom were they appointed?

Ans. By myself, sir.

Int. What relation did Graham, Able & Co. sustain to the Illinois Central Railroad Company at that time?

Ans. They were transfer agents.

Int. What were their duties as transfer agents?

Ans. To receive freight delivered to them by the Illinois Central railroad and destined for shipment down further and to forward it, and then to receive freight from the boats, to see that it was in good order, and deliver it to the railroad company.

Int. What was the usage and custom of the company with respect to fire risks in the case of cotton?

Ans. Well, sir, we declined taking it unless the shipper would take the insurance, and we marked across the bill of lading, in red ink so as to completely call their attention to it, that the company relieved themselves from the risk.

Int. Did they refuse to take it on any other terms?
Ans. Yes.
Int. Were the agents instructed to that effect?
Ans. Yes, sir.

Cross-examined by Mr. Roberts.

95 Int. The plaintiffs have shipped a great deal of cotton over your road?
Ans. I think they have; a good deal.
Int. Has it not been a uniform usage, then, as to cotton shipped by the agents of the plaintiffs from Memphis, in dealing with the plaintiffs, to take up the Memphis bill of lading and give a bill in this form?
(Printed form alluded to in the testimony of Mr. Simmons shown to witness.)
Ant. It was, sir.
Int. It was omitted in this case?
Ans. Not to my knowledge.
Int. You do not know anything about how that fact was?
Ans. No, sir, I do not.
Int. That is a form you adopted yourself?
Ans. Yes, sir.
Int. That paper I hand you is in evidence as part of Mr. Simmons's testimony?
Ans. Yes, sir.
Int. Now, did not you stipulate that if any loss occurs upon any other road than your road in the transit of cotton the owner shall look to the road that loses the freight or destroys it?
Ans. I do. I only hold myself responsible for the extent of my own road.
96 Int. Then if your agent at Memphis made any contract which would hold you for damages accruing upon any other road, did he not exceed his authority?
Ans. Yes, sir, he did.
Int. And if that bill of lading given at Memphis should hold you responsible for loss accruing beyond your road, it would be in contravention of the authority you gave?
Ans. Yes, sir. But we had this agreement with other roads, that I would settle that loss and afterwards I would settle with the party making the loss.
Int. But do you not stipulate that the legal liability shall be with the company on whose road the loss shall take place?
Ans. I do.
Int. And is it not true, in point of fact, that you have in one instance sent them to another road which lost some little cotton?
Ans. I believe I have.
Int. On a steamboat bill like that?
Ans. I do not recollect about a steamboat bill. I have seen none except one.
Int. Was it not the duty of Graham, Able & Co., at Cairo, to take up this bill and give railroad bills?
Ans. Yes, sir.
97 Int. Now, with reference to the transportation of cotton, you try to put ten tons on a car, do you not?
Ans. Yes, sir; that is our rule.
Int. And a box car would not hold ten tons?
Ans. No, sir.

Int. Is not that one of the reasons why you carry it on flat cars?

Ans. No, sir; it is not; because we have a superabundance of house cars at Cairo, and we have nothing to fill them coming back. I want to distribute these cars back over the road, and I have been compelled to run them back empty. I put it on flat cars because I think they are less liable to damage.

Int. Can you make box cars safe?

Ans. By nailing slats on them you can.

Int. Is it not the fact that the Pittsburgh and Fort Wayne, the Michigan Central, and the Michigan Southern railroads carry cotton in box cars?

Ans. No, sir. I have known them load in box cars and I have known them load in stock cars.

Int. Was that not the general rule?

Ans. I think it was.

Int. Do you not know that the Pittsburgh and Fort Wayne railroad have refused to receive cotton from your yards because it was not on box cars?

Ans. I have never heard of that.

98 Int. Running through a prairie country at a season of the year when prairie fires were prevaling, and supposing it to be in proof that prairie fires are constantly seen blazing up, would not the cotton be safer in box cars than on flat cars?

Ans. It is too nice a point for me to decide, because it is just as likely to draw the sparks into a box car as it is into a flat car.

Int. If it was blown up into a blaze on the side of the track would it not be safer in box cars than on flat cars?

Ans. I say it would.

By Mr. Jewett:

Int. Did Able & Co. have authority from you to make contracts for you for through freights to the east?

Ans. Only for price. I guaranteed the price. I gave them the rates and then apportioned it out among the different roads.

Int. Had they authority to contract against risks by fire?

Ans. They were expressly ordered not to take fire risks.

Int. Did you have through arrangements with eastern roads?

Ans. I had, sir.

Also George Luffkin, who testified as follows:

99 George Luffkin, called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. Jewett, and testified as follows:

Int. Where do you reside?

Ans. Cairo.

Int. Were you residing there in the fall of 1862?

Ans. Yes, sir.

Int. What was your business at that time?

Ans. I was clerk for Graham, Able & Co.

Int. What part of the business did you attend to?

Ans. I was loading cars.

Int. Do you recollect the circumstance of loading 50 bales of cotton marked L D, 1 to 50, on or about the 27th or 28th of October, 1862?

Ans. Yes, sir.

Int. Have you got your books here showing the loading?

Ans. Yes, sir.

Int. Where is it?

Ans. On the table.

Int. Look at it. (Book handed to witness.) Do you know what brought that cotton to Cairo?

Ans. I do not remember what boat brought it.

Int. The John H. Dickey?

Ans. I could not say for certain.

Int. You did not notice before you came up?

100 Ans. No, sir.

Int. When was that loaded?

Ans. Loaded on the 28th of October.

Int. Can you, by refreshing your memory from the book, tell what cars it was loaded on?

Ans. On car 1,151 there was 34 bales, and on car 55 there was 16 bales.

Int. About when did that cotton leave Cairo?

Ans. It left there on the 29th, the next day after loading.

Int. Did you load any other cotton that day that went out on that train with the same marks?

Ans. No, sir; different marks.

Int. How long have you been residing at Cairo?

Ans. I think some eight or nine years.

Int. What have you been doing most of that time?

Ans. Railroading most of the time.

Int. Have you seen any cotton on steamboats?

Ans. Yes, sir; all through the war we have seen it every day.

Int. How is it generally carried?

Ans. Around the guards of the boats.

Int. With or without covering?

Ans. Without covering.

Int. Have you seen any burn?

Ans. Yes, sir.

Int. When?

Ans. At Cairo, at the landing.

101 Int. In any considerable quantity?

Ans. Yes, sir; a large lot of it.

Int. How many bales?

Ans. I do not know how many.

Int. Where was it?

Ans. On a barge at the landing at Cairo.

Int. Was the barge loaded with cotton?

Ans. Yes, sir; a large load too.

Int. What facilities were there for extinguishing that fire?

Ans. Pretty good. It was right on the river there and she had two engines playing on it besides, and the men with buckets.

Int. Was there a large number of men?

Ans. All the men on the boat.

Int. What success did they have in saving it?

Ans. There was not much saved. I do not think there was a couple of hundred.

Int. Out of the whole lot?

Ans. Yes, sir; there might have been more or there might have been less.

Int. How many were there in the whole lot?

Ans. I do not know how many there was.

Int. Was there several hundred?

Ans. There must have been that many; it was a very large barge.

Int. Five or six hundred do you think?

Ans. I think there must have been that many.

102 Int. Have you ever had any experience in extinguishing cotton that was on fire?

Ans. I had some experience that night; four of us got into a small boat and thought we would save all we could; we went out and took ropes with us and as we come to a bale of cotton we would tie them together; we got 12 bales ashore. There was one bale had fire in it, and we worked at that bale to put it out, and I stood there till nearly morning and every few minutes I had to throw water on to put it out, and as we threw water on it sucked it up again, and when we come to it in the morning it was nothing but a cinder.

Int. It burnt all the inside, did it?

Ans. Yes, sir.

Cross-examined by Mr. Roberts.

Int. Did you see this cotton loaded on these cars?

Ans. Yes, sir.

Int. How many tiers high was it?

Ans. Three tiers; two tiers as broad as the car and then one tier over the middle, on the top.

Int. Did you load from the platform on to the cars?

Ans. Yes, sir; loaded just same as the load hay, except that the top tier is only one tier lengthways to build the others on.

103 Int. What part of the cars would they load first? would they push the bales over to the opposite side from that on which you stood?

Ans. Yes, sir; certainly they would have to do so.

Int. Then they would load that side of the car first?

Ans. No, sir; fill the bottom first, then the next tier, and then four or five men would load the other on the top.

Int. How many tiers would there be?

Ans. Two high and one to bind.

Int. You say you loaded all these five cars?

Ans. Yes, sir.

Int. How many were loaded on car 1,151 altogether?

Ans. Thirty-four bales.

Int. That was the full load?

Ans. Yes, sir.

Int. That car belonged to the plaintiffs?

Ans. It belonged to Woodward, Baldwin & Co.

Int. How many were loaded on car 55?

Ans. Thirty-six bales altogether on 55; sixteen for Woodward, Baldwin & Co., and the rest for another party.

Int. You say that of the cotton you saw burning perhaps about 200 bales was saved out of perhaps five or six hundred altogether?

Ans. It might have been. I did not pay any particular attention to it.

By Mr. Jewett:

104 Int. Is it loaded crossways on the cars, and does it hang over the sides?

Ans. Some bales would just be even on the cars and some bales are a little larger than others.

By Mr. Roberts:

Int. What was your practice about putting the bales of the cotton in order?

Ans. We generally had a man looking over it to pack it up.

Int. You baled it when necessary?

Ans. When the packing was torn.
Int. You put on other bagging to make it tight and safe?
Ans. We put bagging on to make it safe, and charged it to the parties.
Int. Did you do so in this case?
Ans. I do not know whether we did in this case or not.
Int. But it was your practice?
Ans. Yes, sir.

Defendants then offered evidence tending to prove that there was no negligence in the transportation of the plaintiffs' cotton, but that the same was destroyed by fire without the negligence of defendant, and that defendant was diligent in its efforts to save the cotton after it caught fire, and
105 no more than was saved could have been saved by reasonable diligence.

Plaintiffs then prayed the court to charge the jury as follows:

1. The plaintiffs pray that the jury may be instructed that the bill of lading given in evidence by the defendant, dated at Memphis, Oct. 24, 1862, was discharged by the delivery of the cotton at Cairo, and the defendant is not protected by any exception contained therein while the cotton was in transit over its road.

2. Should the jury find from the evidence that the defendant's agent at Memphis had no authority to contract for the terms of carrying of the cotton through to Baltimore, and that it was its usage to give a bill of lading at Cairo specifying the terms and conditions upon which freight was carried over its road, limiting its liability for loss or damage to goods to the time of their being in its possession, and requiring the owner in case of loss or damage to look to the company or carrier having possession of the goods at the time of such loss or damage for compensation, such evidence is competent; and if the jury deem it sufficient, they may find therefrom that the Memphis bill of lading was not intended to cover the transit of the cotton over the defendant's road.

106 3. That the evidence which has been given of the usage of the defendant with respect to the giving of bills of lading for goods in transit over its road, and of the acts and declarations of the defendant's agents at Cairo, is competent; and if the jury find it to be sufficient, they may find therefrom that the Memphis bill of lading did not cover the transit of the cotton over the defendant's road.

4. The jury may take into consideration the bill of lading itself, the usage of the trade, and the acts and declarations of the defendant's agents, for the purpose of determining whether the Memphis bill of lading covered the transit of the cotton over the defendant's railroad.

5. If the bill of lading did not cover the transit of the cotton over the defendant's road the defendant is liable and bound to pay for it under the proofs in this case, there being no evidence that it was destroyed by the act of God or the public enemy.

7. Notwithstanding the exception in the bill of lading respecting loss by fire the defendant was bound to take all due care of the property committed to its custody for carriage; it was bound to take into consideration the character of the commodity, the nature of the country, the risks and dan-
107 gers of the way, and to provide safe and proper means of transportation, a sufficient number of hands to manage the train, sufficient means for extinguishing accidental fires, and if there has been any loss of the plaintiffs' property in consequence of the neglect on the part of the defendant of any of these means and precautions the defendant is liable for such loss notwithstanding the exception in the bill of lading.

6. The defendant is bound to account for all the cotton of the plaintiffs received by it either by showing that it has been delivered according to the contract or that it has been lost under circumstances which render it exempt from liability. It is not incumbent on the plaintiffs to show what has become of the cotton, nor are they bound to show that the cotton saved from the fire belonged to them as distinguished from that of other owners of cotton on the same train. The defendant is liable to the plaintiffs for any cotton saved from the fire or carried away by others, unless it is proved that it did not belong to the plaintiffs.

8. The defendant was bound by its servants and agents to observe due care and caution in the running and management of its train, taking
108 into consideration the nature of the commodity, the character of the country, the season of the year, the prevalence or presence of any cause of danger, and to avoid all exposure to loss, damage, or peril so far as it could be done by the exercise of diligence and caution.

9. If it appears from the evidence that fires are liable and likely to be enkindled and drawn to the train by the eddy or whirl in the atmosphere caused by the motion of the train, and the presence of fire was observed by the engineer so far in advance that the train might have been stopped or its motion checked in time to prevent that effect, and if he went on, making no effort to stop it, and the fire was in that manner communicated to the cotton, and it was destroyed thereby, this would be negligence which would render the defendant liable.

10. The carrier is bound to know and to provide against the dangers incident to the business in which he is engaged and to the manner of conducting it.

11. The defendant was bound in the exercise of that care and diligence which the law devolved upon it not only to prevent the cotton from taking fire, if by such care and diligence it could be done, but also after it
109 took fire it was bound by its servants and agents to do all that could reasonably be done to save the cotton or as much of it as possible from destruction.

12. The measure of damages is the value of the cotton at Baltimore, (less the freight,) to which interest may be added.

But the court refused so to do. Whereupon plaintiffs then and there excepted to the refusal of the court to give the said several instructions, and to each and every such refusal respectively.

The court thereupon, of its own motion, charged the jury as follows, viz:

Charge to the jury.

In the fall of 1862 the plaintiffs were merchants of Baltimore, and through their agent, Mr. Meyer, purchased and forwarded to that and other eastern cities from Memphis, Tennesee, considerable quantities of cotton, the transit being over the road of the defendant. At that time Daniel Able & Co. were the agents of the defendant in Memphis for the purpose of making contracts for the shipment of merchandise, and Graham, Able & Co. were the transfer agents of the defendant at Cairo in the shipment of property from
110 the railway to the river and from the river to the railway. On the 24th of October, 1862, Mr. Meyer, as agent of the plaintiffs, shipped on the steamboat John H. Dickey fifty bales of cotton, and took a bill of lading from Daniel Able & Co., as the agents of the defendant, in the following form:

Shipped by Dan. Able & Co., (for account E. Meyer,) forwarding and commission merchant, Bradley Block, foot of Jefferson street, in good order and condition, on board the good steamboat called the John H. Dickey, whereof is master for the present voyage, the following articles,

being marked and numbered as below, and are to be delivered without delay, in the like good order and condition, at the port of Cairo, (fire and the unavoidable dangers of the river only excepted,) unto Graham, Able & Co., or to their assigns, he or they paying freight at the rate of two and 97-100 dollars per 100 lbs. through to Baltimore and charges.

In witness whereof, the owner, master, or clerk of said boat hath affirmed to five bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated at Memphis, the 24 day of Oct., 1862.

Marks, L D, from 1 to 50. Articles, (50) fifty bales cotton. Weight, ——.

Not accountable for condition, hoop off, or bagging torn, and owner
111 assumes all risk of fire and unavoidable accidents en route to destination.

W. G. CIRODE,
For DAN'L ABLE & CO.,
Agents Ill's Central RR.

For Woodward, Baldwin & Co., Baltimore, Md.

A few days thereafter the cotton, having arrived at Cairo, was placed on what are called platform cars on the railway, and on the 30th of October, while the train which carried the cotton was proceeding from Prairie Green to Ashkum, a station about seventy miles from Chicago, the cotton took fire from a fire on or near the railway and was almost entirely consumed. The question to be determined is, Is the defendant liable? and if so, to what extent? Taking the testimony of Mr. Forsyth, the general freight agent of the road, of Mr. Meyer, and of Mr. Cirode, the clerk of Daniel Able & Co., and interpreting the contract by the aid of the facts stated by them, and which are not controverted, I think the true construction of the bill of lading is that it was a contract for the shipment of the cotton from Memphis to Baltimore, and that the rights of the parties are to be controlled by it.

112 There is no evidence of any other or different contract at Cairo concerning the transit of the property. By the terms of this contract, therefore, the defendant was not to be held responsible in the case of a loss by an accidental fire if the defendant used due care in transporting the cotton. When the defendant has shown that the cotton has been destroyed in whole or in part by fire then he is prima facie relieved from responsibility for such destruction, unless the shipper (the plaintiff) can show the carrier (the defendant) has been guilty of negligence or of a want of due care in relation to it.

Where property is transported by a carrier under a contract exempting him from liability in case of fire he becomes an ordinary bailee and is held only to that kind of care and diligence applicable to a bailee under the circumstances of the case.

Notwithstanding the clause of exemption in the contract the defendant was required to use due care and diligence in transporting the cotton, as to the kind and quality of the cars, as to the running and management of the trains, as to the proper means of extinguishing fires caused by a spark from the engine or otherwise, as to the train hands having reference to the season of the year and the character of the property of the country through which it was to be carried, and the nature of transit, viz: by railroad.

113 An illustration that is often given of the kind, of care and diligence required, is that care and diligence which a prudent person under similiar circumstances would exercise over his own property.

Did the defendant use such care in this case? It is to enable the jury to answer this question that the evidence on both sides has been principally directed. It is contended on the part of the plaintiffs that there was a want

of proper care in many or all of these respects, and particularly in running the train under the circumstances in proof, from Prairie Green to Ashkum. It is insisted on the part of the defendant that all due care was used in every respect.

Before you can determine as to one point, the prudence of running the train then and there, you must ascertain if possible what appeared on the face of the prairie and on the line of the road, to those who had the management of the train. By what they saw or by what they could have seen by the exercise of proper diligence, it is to be determined whether or not they acted prudently. Unfortunately, on this point there is great conflict in the evidence. It is for you to reconcile that conflict if you can, if not, it is for you to determine the degree of credibility to be given to each witness, taking into consideration his relations to the parties, his intelligence, his means
114 and opportunities of knowledge, the consistency of his statements, and his manner and deportment on the stand. The position of the plaintiffs is that there was a fire on the prairie, so near or on the track as to indicate to the managers of the train great danger and risk in proceeding. The position of the defendant is that there was no such fire on or near the track as to show a reasonable probability of danger, but that there was a smouldering fire, so slight as not to attract attention, on or near the track, which was wafted into a flame by the wind created by the motion of the train. What was the condition of the track and its immediate vicinity at the time? Was it prudent under the circumstances to run the train as it was run; that is, did it seem prudent to those having the management of the train, they exercising due care and diligence, because you must bear in mind you are not to judge by the event, but by what appeared at the time? I invite your careful and scrutinizing attention to all the testimony on both sides on this point.

If there was a want of due care and diligence on the part of the defendant in any respect, and thereby the cotton was destroyed, then the defendant should be held responsible for the loss; otherwise, not.

115 If you shall find that the burning was not occasioned by the want of due care and diligence on the part of the defendant, then the next question is, did the agents of the defendant make all proper and necessary efforts to save the property, and was any of it destroyed in consequence of the want of such efforts? If so, then the defendant ought to be held answerable for all that could have been so saved.

But you will determine this by the actual circumstances surrounding them, and with the means and appliances at their command. It was not, of course, necessary that they should incur actual danger to their persons by the fire, but only that they should do all in their power to preserve the property, having reference to the rapidity of the fire and the means at their disposal.

The only ground upon which the defendant can escape liability under its contract, is by showing that the cotton was destroyed by fire; for whatever was not destroyed by fire, no matter who took it or what became of it, the defendant is answerable. In addition to what was taken by the persons who came to the train there were two bales saved. For all this the defendant must be held accountable in any event, because, I think, it was incumbent on the defendant to show to whom the cotton saved belonged, if it did not belong to the plaintiffs.

116 If there were two fires on the prairie, the want of diligence must have been in reference to that fire which destroyed the cotton.

Whether the jury shall find for the plaintiffs for the whole or a part of the loss, the measure of damages in either case will be the value of the cotton at Baltimore, when it should have arrived there, but for the loss, deducting

the freight, and the jury may, if they choose so to do, allow additional damages by way of interest. You will understand that it is highly desirable you should decide the facts of this case. There have been three trials without a verdict. You should investigate the facts with an earnest effort to ascertain the truth of the case.

The testimony has all been taken down by reporters, and if the counsel agree, it may be submitted to you, or if not, and you should have any misunderstanding as to what any witness has stated, upon application to the court his testimony will be read to you.

To all that portion of said charge by which the jury were instructed that the bill of lading offered in evidence under the conceded facts of the case was an undertaking on the part of the defendant to transport the said cotton from Memphis, Tennesee, to Baltimore, Maryland, plaintiffs then
117 and there excepted, and prayed that these their exceptions might be signed and sealed and made a part of the record of said cause which is done.

[SEAL.] THOMAS DRUMMOND.

Hon. Thos. Drummond:

DEAR SIR: The above bill of exceptions, in behalf of pl'tff's we believe correct.

GOOKINS, THOMAS & ROBERTS.
J. N. JEWETT.

Endorsed: Filed May 19th, 1864.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the 19th day of May, A. D. 1864, came said defendant' by its attorneys, and filed in said clerk's office its bill of exceptions in said entitled cause; which said bill of exceptions is in words and figures following, viz?

118 In the circuit court of the United States for the northern district of Illinois.

WILLIAM WOODWARD, CHRISTOPHER C. BALDWIN, AND William H. Balwin
vs.
ILLINOIS CENTRAL RAILROAD COMPANY.

Be it remembered, that on this 10th day of May, A. D. 1864, being one of the days of the May term, A. D. 1864, of said court, this cause having been called for trial, before the Honorable Thomas Drummond, the presiding judge of said court, and a jury, the following named persons were presented as a jury in said cause, to wit, Samuel Sherman, Joseph Martin, John Brown, Moses J. Richards, J. M. Sanford, J. M. Hunter, Laurence L. Parker, Julius M. Warren, Moses Dean, Philander C. Mervin, Joel Harvey, and H. D. Morry, who having been first duly sworn to answer such questions as might be propounded to them by the court or counsel, touching their competency to serve as jurors in said cause, and having been examined and accepted by and on the part of the said plaintiffs, were thereupon examined in respect to their competency as jurors in said cause, by the said defendant, and the said John Brown, one of the persons so offered as a jury, and sworn and accepted by the said plaintiffs, as aforesaid, having, on his examination by plain-
119 tiffs, admitted that he had had a conversation in relation to said cause with a Mr. Allen, a juror in said cause at a former trial thereof, in answer to interrogatories propounded to him by defendant's counsel, testified as follows:

Int. What is your name, sir?

Ans. Brown.

Int. You said you had some conversation with a former juror in relation to this case?

Ans. Yes, sir; he gave me his impression of the case.

Int. Did he state to you any of the facts of the case?

Ans. I think he did.

Int. Did he go pretty fully into the details of the case?

Ans. As he understood it.

Int. Did what he said make any impression on your mind as to the merits of the case?

Ans. Well, if his version of it was correct, perhaps it would.

Int. Did you obtain or form any opinion concerning the rights of the case?

Ans. If his statement was correct I did.

Int. Did you express any opinion to him?

Ans. No, sir.

Int. Have you any opinion in respect to the merits of *of* the case formed from or based upon your conversation with Mr. Allen, or otherwise?

Ans. From Mr. Allen's statement I think I would have an opinion.

Int. You formed an opinion in respect to the case from what he stated?

120 Ans. If what he stated was so, I think I did.

Int. If the facts should turn out as he stated, or substantially so, would you or not have an opinion?

Ans. Probably I should.

And thereupon the defendant, by its counsel, objected to the said John Brown, as a juror for cause. But the said judge overruled said objection, and to the decision and ruling of said judge in that behalf the defendant, by its counsil, then and there excepted. And thereupon the counsil for defendant proceeded with the examination of said John Brown as follows :

Int. Did you believe Mr. Allen?

Ans. I had no reason to disbelieve him.

Int. You did believe his statement then ?

Ans. I can't say anything about what Mr. Allen said. I had no right to dispute it at all.

Int. Did you give any credit to Mr. Allen's statements as to the facts of the case?

Ans. It did not bear on my mind any way. He talked of the case; that it was a plain one as he thought, and then he gave me some of the facts. That is all he said about it.

The said defendant, by its counsil, thereupon challenged the said John Brown, to the favor; but which challenge the said judge refused to entertain and overruled the same, and to the decision of the said judge,

121 in refusing to entertain said challenge and in overruling the same, the defendant, by its counsil, then and there excepted. And thereupon the defendant, by its counsil, challenged the said John Brown peremptorily, and said challenge was allowed and he was not sworn in the jury.

And afterwards, twelve jurors having been accepted by both parties, and having been duly sworn to try said cause according to the law and the evidence, the said plaintiffs, for the purpose of sustaining the issues on their part, gave evidence to the jury tending to show a delivery by them to the defendant of fifty bales of cotton for transportation, the weight and value of said cotton, and its loss by fire, whilst in transit upon the cars of the defendant, near to a place called Askhum, about 70 miles distant from Chicago.

The plaintiffs thereupon rested their case, and the defendant, to sustain the issues on its part, then offered in evidence and read to the jury a bill of lading for said cotton, in the words and figures following:

Shipped by Dan. Able, forwarding and commission merchants, Bradley Block, foot of Jefferson street, for ac. E. Meyer, in good order and condition, on board the good steamboat called the John H. Dicky, whereof is master for the present voyage, the following articles, being marked and numbered as below, and are to be delivered in the like good order and condition at the port of Cairo, (fire and the unavoidable dangers of the river only ex-
122 cepted,) unto Graham, Able & Co., or to their assigns, he or they paying freight at the rate of ten and 79-100 dollars per 100 lbs. through to Baltimore.

In witness whereof, the owner, master, or clerk of said boat hath affirmed to 5 bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated at Memphis, the 24th day of Oct., 1862.

Marks, L D, from 1 to 50; articles, (50) fifty bales cotton; weight, .

Not accountable for condition, hoops off, or bagging torn, and owner assumes all risk of fire and unavoidable accident en route to destination.

W. Y. CIRODE,
For DAN'L ABLE & CO., *Ag'ts Ill. Central RR.*

For Woodward, Baldwin & Co, Baltimore, Md.

The defendant in connection with said bill of lading presented other evidence to the jury, tending to show the circumstances of the shipment of said cotton to Memphis and of the execution of said bill of lading; that E. Meyer was the agent of the plaintiffs, and Dan'l Able & Co. the agents of the defendant; that Graham Able & Co. were the transfer agents of the
123 defendant at Cairo, and were also doing business at Cairo as forwarding and commission merchants, and had been for a considerable time prior to the date of said bill of lading, and that said bill of lading was executed by the said Dan'l Able & Co. as agents of the defendant, as and for a through bill of lading to Baltimore, and was so understood and accepted by said Meyer as agent for the plaintiffs, and that said cotton at the time of its loss by fire was in transit under the terms and provisions of said bill of lading.

Here the defendant rested.

The plaintiffs, as rebutting to the case so made by the said defendant as aforesaid, thereupon offered and presented to the jury, vidence tending to show that they regarded and treated the said Graham, Abel & Co. as their agent at Cairo in respect to said cotton; that said cotton arrived at a place called Prairie Green, about three miles south of Askkum on the road of the defendant, at about 11½ o'clock a. m. of the 30th day of October, 1862; that there was at that time a prairie fire burning on the prairie to the west of and near to the railroad track, and which reached the track at a small ridge about half way between Prairie Green and Askhum, and that the cotton which was loaded upon open or platform cars at the rear of the train took fire from said fire upon the prairie; and further tending to show
124 that the employees of the defendant were guilty of negligence, and failed to exercise due care and caution both in respect to the manner of the loading said cotton and the kind of cars used by them for that purpose, and in respect to the origin of the fire in said cotton, and in the management of the cars and cotton after it had taken fire; that some of said cotton was in fact saved, and that more might have been saved if the employees of the defendant in charge of said train had used reasonable and proper diligence in that regard; that there were several men belonging to said train; that in addition thereto, there were the employees of the defendant belonging to another freight train not containing cotton following the one containing said cotton on the same time, and the station agent of the defendant at Askhum, all of whom were at the place when said cotton burned, very soon after the

origin of said fire. And in the progress of said evidence, one Edwin Mead, being offered and sworn as a witness on the part of said plaintiffs, and having testified that he was present with other persons at the place where said cotton was burning shortly after the train was stopped, and that he assisted in the efforts made by the people collected there to save the cotton, was asked by the plaintiff's counsil the following questions:

Int. Did you have any conversation with the railroad employees on the cotton train at the time it was burning, with reference to your saving
125 the cotton?

Ans. Yes, sir.

Int. State it.

To which interrogatory and to any answer thereto by the witness, or any statement by him of said conversation, the defendant, by its counsil, then and there objected; but the judge presiding at said trial aforesaid overruled the objection of the defendant so made by its counsil as aforesaid, and allowed the witness to state what was said by the employees of the defendant at the time the cotton was burning; and to the decision of said judge in overruling said objection and permitting the witness to answer said interrogatory the defendant, by its counsil, then and there excepted. And thereupon the witness answer as follows:

Ans. I asked if we saved any if we could have it, and he said "the cotton don't belong to us, and if you can save any you can have it."

And in the further progress of said evidence one Matthew Tomlin, being called and sworn as a witness on the part of said plaintiff, and having testified that he was present at the burning of said cotton, and saw these two men, who were strangers, and apparently passengers on said train, was asked by the counsil for the plaintiffs the following questions:

Int. Do you know whether the plaintiffs have made any efforts to
126 obtain the attendance here of those men?

To which interrogatory and to any answer thereto by said witness the defendant, by its counsil, then and there objected; but the presiding judge aforesaid overruled said objection, and permitted the witness to answer said interrogatory; and to the decision of said judge in overruling said objection and permitting said interrogatory to be answered the defendant, by its counsil, then and there excepted. And the witness thereupon answered said interrogatory as follows:

Ans. I was employed by the plaintiffs to try and find those two men. I was gone two weeks, and I did all in my power to find them, but was not able; but I travelled a good deal. I could not find them. I understood they have made every effort to find them.

And in the further progress of said evidence one Lawrentia Stringham, being called and sworn as a witness on the part of the said plaintiffs, and having testified that she was in the afternoon of said 30th day of October at the place when said cotton was burning, was asked by the counsil for the plaintiffs the following questions.

Int. Did you see any of the cotton train men?

Ans. Yes, sir.

127 Int. Did you have any conversation with any of the men on the train?

Ans. Yes, I saw a man on the track that belonged to the train.

Int. Did you have any conversation with these men?

Ans. Yes, we had some conversation.

Int. State to the jury what that conversation was.

To which interrogatory and to any answer thereto by the witness the defendant, by its counsil, then and there objected; but the judge aforesaid overruled said objection of the said defendant and permitted the witness to

answer said interrogatory; and to the decision of said judge in overruling said objection and allowing said interrogatory to be answered the defendant, by its counsil, then and there excepted. And thereupon the witness answered said interrogatory as follows:

Ans. I spoke, "This will be a heavy loss to the railroad company." "No," says he, "I think not, for all such goods are shipped at the owner's risk." I said, "How did the cotton take fire, from the engine or from the prairie?" Said he, "It took from the prairie." That is the reply he made to me.

And in the further progress of said evidence Henry C. Wicker, being called and sworn as a witness on the part of the said plaintiffs, and having testified that he was and for two months last past had been freight superintendent of the Chicago and Alton Railroad Company, and that he had
128 been for three years in the employ of said company as office clerk, most of the time in the freight department; that he was acquainted with the fact that said railroad company had during said three years transported cotton in bales along said road, and also acquainted with the manner of such transportation, was asked by the counsil for the plaintiffs the following questions:

Int. I will ask you to state whether it would be safe to carry cotton in open or platform cars, or in box cars, through a prairie region of country, at a season of the year when prairie fires prevail?

To which interrogatory and to any answer thereto by the witness the defendant, by its counsil, then and there objected, on the ground that it was calling for the opinion of the witness simply as to the proper and safest mode of carrying cotton by railroad companies, and was an attempt to substitute for the opinion of the jury the opinion of the witness upon the issues of the case; but the said judge overruled the objection of the said defendant so made as aforesaid, and permitted said interrogatory to be answered; and to the decision of the said judge in overruling said objection and permitting said interrogatory to be answered the defendant, by its counsil, then and there excepted. And thereupon the said witness answered as follows:

Ans. Well, my opinion is that it *that it* would be a good deal safer in box cars.

The counsil for the plaintiffs then asked said witness the follow-
129 ing questions:

Int. Why do you carry cotton in box cars?

To which interrogatory and to any answer thereto by said witness the defendant, by its counsil, then and there objected, on the ground that it was improper upon this question of diligence to prove either the usage of a particular railroad company or the reasons which led to that usage; but the said judge overruled the objection of the defendant so made as aforesaid and permitted the witness to answer said interrogatory; and to the decision of the court in overruling said objection and in permitting said interrogatory to be answered the defendant, by its counsil, then and there excepted. And the witness thereupon answered said interrogatory as follows:

Ans. Because we consider there is less risk from fire.

The examination of said witness having been concluded, the defendant, by its counsel, then moved the court to exclude from the jury the opinion of the said witness as to the best mode of carrying cotton, on the ground that he does not appear to be an expert, and also on the ground that it is not a question for an expert, but is a question to be determined by the jury upon all the facts of the case; but the said judge overruled the motion of the said defendant so made as aforesaid, and refused to exclude said opinions of said witness from the jury; and to the decision of said judge in overruling
130 said motion and refusing to exclude said opinions from the jury the defendant, by its counsil, then and there excepted.

And in the further progress of said evidence, one H. A. Rapp being called and sworn as a witness on the part of the said plaintiff, and having testified that he was local freight agent of the Michigan Southern and Northern Indiana Railroad Company, at Chicago, and had been connected with said company for about three years, and with the freight department of other roads for ten years, was asked by the counsil for the said plaintiffs the following questions:

Int. How long has the Southern Michigan and Northern Indiana RR. Co. been transporting cotton to your knowledge?

Ans. To my knowledge since the fall of 1862.

Int. How do they transport it, in box or on platform cars?

To which question and to any answer thereto from the witness the defendant, by its counsil, objected, on the ground that evidence of the usage or practice of a particular road was incompetent and improper; but the said judge overruled said objection of the said defendant and permitted the witness to answer said question; and to the decision of the said judge in overruling said objection and permitting said question to be answered, the defendant, by its counsil, then and there excepted. And the witness

131 thereupon answered said interrogatory as follows:

Ans. All we have shipped we have shipped in box cars.

The counsil for plaintiffs, then asked the witness the following question:

Int. Why do you ship in box cars?

To which interrogatory and to any answer thereto by said witness the defendant, by its counsil, objected; but the said judge overruled said objection and permitted the said interrogatory to be answered; and to the decision of the said judge in overruling said objection and permitting said interrogatory to be answered the defendant, by its counsil, then and there excepted. And thereupon the said interrogatory was answered by the witness as follows:

Ans. One reason is, during the season we receive cotton our business is slack and we have plenty of box cars, and for that reason we have used them always. I don't know what we should have done if we had been short of cars.

The plaintiffs' counsil thereupon asked said witness the following question:

Int. I will ask you to state which is the safest mode of transporting cotton through a prairie country at a season of the year when prairie fires prevail?

To which interrogatory and to any answer thereto by the witness the defendant, by its counsil, then and there objected, on the ground that it was substituting the opinion of the witness in place of the judgment of

132 the jury upon all the facts of the case; but the said judge overruled said objection of the defendant and permitted the witness to answer said interrogatory; and to the decision of the court in overruling said objection and permitting the witness to answer said interrogatory the defendant, by its counsil, then and there excepted. And the witness thereupon answered the said interrogatory as follows:

Ans. Well, I should say in that case that it was safer in box cars.

And in the further progress of said evidence, one Charles M. Gray, having been called and sworn as a witness on the part of the said plaintiffs, and having testified that he was and had been for nearly three years general freight agent of the Michigan Southern and Northern Indiana Railroad Company and that they had been in the habit of transporting cotton on said railroad for three years last past, was asked by the plaintiffs' counsil the following question:

Int. What is your mode of shipping cotton, in box or platform cars?

To which interrogatory and to any answer thereto by the witness the defendant, by its counsil, then and there objected; but the said judge overruled said objection and permitted said witness to answer said inter-
133 rogatory, and to the decision of said judge in overruling said objection and permitting said witness to answer said interrogatory the defendant, by its counsil, then and there excepted. And the witness thereupon answered said interrogatory as follows:

Ans. We load it in box cars.

The plaintiffs' counsil then asked the witness the following question:

Int. I will ask you to state, in your opinion, whether it would be safer to carry cotton in bales in box or platform cars, through a prairie country, at a season of the year when prairie fires prevailed?

To which interrogatory and to every answer thereto by the said witness, the defendant, by its counsil, then and there objected; but the said judge overruled the objection of the said defendant and permitted the witness to answer said interrogatory; and to the decision of the said judge in overruling said objection and permitting said interrogatory to be answered the defendant, by its counsil, then and there excepted. And said witness thereupon answered said interrogatory as follows:

Ans. Well, if the box cars are quite tight, it would be safest in box cars.

The plaintiffs having rested, the defendant offered and produced to
134 the jury evidence tending to show that the cotton in question was received by Graham, Able & Co., at Cairo, on or about the 26th day of October, A. D. 1862, and was loaded by said Graham, Able & Co. upon the cars of the defendant, and the same open or platform cars upon which the same was at the time of its destruction by fire; that said cotton was properly loaded, and upon such cars as are usually employed for the transportation of cotton over railroads, in the places where cotton is produced; that cotton in bales being bulky, it is impossible to handle it conveniently in box cars or to carry the usual weight of a car load in cotton in a box car; and that in respect to the risk of loss by fire, the best and safest mode of transporting cotton by railroad is in open or platform cars; that the train containing said cotton was supplied with the usual appliances for extinguishing fire in the cotton, and with the usual number of men to run it; that whilst it was running from Prairie Green north towards Askhum, and at a point about ($\frac{3}{4}$) three fourths of a mile from Askhum, the cotton on said train accidentally took fire without any negligence or want of due care and prudence on the part of the men in charge of said train; that the prairie fire on the west of the track between Prairie Green and Askhum was at
135 that time at a considerable distance from the railroad, so far away that it was entirely safe to run said train by it, and that said prairie fire had no connection whatever with the fire in said cotton; that the ridge about midway between Prairie Green and Askhum was not burned over the next day after said cotton was burned; and that said cotton took fire about half or three quarters of a mile north, of said ridge, where said prairie fire could not have reached the track, by reason of deep sloughs and low ground then filled with water, extending out for a considerable distance to the west of the track; that as soon as the cotton caught fire everything was done by the men in charge of the train that could be done to save the cotton, but that owing to a high wind then blowing and the inflamable character of the cotton it was impossible to save any considerable quantity; that there were firemen upon said train, and the same number on the train following it, which came up within a few minutes after said cotton caught fire; and that there were from 15 to 20 men collected there from the neighborhood, who worked diligently to save some of said cotton until late at night, and that the gross amount

saved by them was from 1,000 to 1,500 lbs., in a damaged state; and that neither in the loading of said cotton or in the kind of cars used for that purpose, nor in respect to the origin of said fire or the management of the train or cotton after it was on fire, were the defendant or its agents
136 and employees guilty of any negligence or of any want of reasonable and proper care and diligence.

Instructions asked on behalf of defendant.

The testimony being closed on both sides the defendant, by its counsil, thereupon prayed the court to charge the jury as follows:

1. If the jury believe from the evidence in this cause that the bill of lading given in evidence was made by the agents of the Illinois Central Railroad Company at the time of the shipment of the cotton in question in this suit, and that said cotton was shipped at Memphis and received by the defendant on its cars at Cairo, under said bill of lading, then the jury are instructed that this bill of lading constitutes the contract of the parties respecting the carriage of said cotton; that it was legal and competent for the parties to make said contract in such form and effect as the same purports on its face to be; and it is the duty of the court and jury to enforce the same according to its true intent and meaning in determining the rights of the parties in this action.

137 2. That the plaintiffs, by the express terms of said bill of lading, assumed all the risk of fire to which the cotton therein mentioned was naturally and unavoidably exposed in the course of its carriage upon the railroad of the defendant, both as respects that means of conveyance and the character and situation of the country through which it was necessary for the same to pass.

3. That the defendant having, by the bill of lading given in evidence, restricted its liability as a common carrier respecting the property in question in this suit, the burden is thereby cast upon the plaintiff of proving that the loss complained of, if by fire, was occasioned by the want of due care or by the gross negligence of the defendant or its agents.

4. If the jury believe from the evidence in this cause that it had been the common usage of the defendant for a series of years prior to the reception of the cotton in question in this suit, to transport cotton upon open or platform cars, and such usage was known and understood by the plaintiffs or their shipping agent at the time of the making of the bill of lading given in evidence and the delivery of the cotton to the defendant, and such
138 mode of transporting cotton is the ordinary and common mode of transporting the same articles upon said railroads in cotton countries, and is in fact a reasonably safe mode under all ordinary circumstances, then the defendant cannot be made liable in this action merely because the cotton in question was carried upon such cars as aforesaid, although the jury may believe from the evidence that there might possibly be some better mode adopted than that above stated.

5. If the jury believe from the evidence that Messrs. Graham, Able & Co. named in the bill of lading given in evidence were, from their experience in the business, acquainted with the manner in which cotton is usually carried upon steamboats and railroads, and well qualified to judge as to the best mode of carrying the same; that at the time of the loading of the cotton in question upon the cars of the defendant, Graham, Able & Co., being qualified as aforesaid, were acting as, and were in fact, the agents of the plaintiffs, as well as of the defendant, in respect to the transfer of the cotton from the boat to the defendant's cars, and as such agents, fairly and without fraud or collusion, assisted in and assented to the loading of said cotton

upon platform and open cars of the defendant, for carriage thereon
139 upon defendant's road, then the plaintiffs ought not to recover damages of the defendant by reason of said cotton being carried upon such platform or open cars instead of box cars, although the jury may believe from the evidence that under some circumstances the cotton might have been safer in box cars than upon the open or platform cars.

But the court refused to charge the jury as prayed by the said defendant, or to give to the jury any or either of the said instructions; and to the refusal of the court to give the said several instructions and to each and every such refusal the defendant, by its counsil, then and there excepted.

But the court, on its own motion, thereupon charged the jury as follows:

(The charge of the court is correctly copied in the plaintiffs' bill of exceptions in this cause.)

And forasmuch as the several rulings and decisions of the court aforesaid and the exceptions of the said defendant thereto aforesaid do not appear of record in said cause, the said defendant has prepared this its bill of exceptions, and prayed that the same may be signed and sealed by the court and made a part of the record in said cause, which is accordingly done this day of , A. D. 1864.

[SEAL.] THOMAS DRUMMOND.

140 Hon. T. Drummond:

DEAR SIR: We believe the foregoing to be a true bill of exceptions in behalf of defendant.

GOOKINS, THOMAS & ROBERTS.
J. N. JEWETT.

Endorsed: Filed May 19th, 1864.

WM. H. BRADLEY, *Clk.*

141 On this day, to wit, the 24th day of May, in the adjourned May term, A. D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JR., AND Christopher Columbus Baldwin
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

The court having considered and being now fully advised on the motion of the defendant for a new trial overrules the same, and awards judgment on the finding of the jury in this behalf.

It is thereupon considered and adjudged by the court that the plaintiffs do have and recover of and from the said defendant the said sum of ten thousand dollars, the damages so as aforesaid found and assessed by the jury, together with the costs and charges herein, amounting to the sum of dollars and cents, and that they have execution therefor.

142 On this day, to wit, the 4th day of June, A. D. 1864, come said plaintiffs, by their attorneys, and filed in said clerk's office their appeal bond in said entitled cause; which said bond is in the words and figures following, to wit:

Supreme Court of the United States.

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JUNIOR, AND Christopher C. Baldwin
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } In error.

Know all men by these presents that we, Samuel B. Gookins and James H. Roberts, are held and firmly bound unto the above-named Illinois Central Railroad Company in the sum of one thousand dollars, to be paid to the said Illinois Central Railroad Company, its successors and assigns, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this third day of June, in the year Domini one thousand eight hundred and sixty-four.

143 Whereas the above-named William Woodward, William H. Baldwin, junior, and Christopher C. Baldwin have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the northern district of Illinois: Now, therefore, the condition of this obligation is such that if the above-named William Woodward, William H. Baldwin, junior, and Christopher C. Baldwin shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

JAS. H. ROBERTS. [SEAL.]
S. B. GOOKINS. [SEAL.]

Approved.

THOMAS DRUMMOND.

Endorsed: Filed June 4th, 1864.

WM. H. BRADLEY, *Clk.*

144 On this day, to wit, the first day of December, A. D. 1864, come said parties, by their attorneys, and filed in said clerk's office their stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

United States of America, Supreme Court, December term, 1864.

THE ILLINOIS CENTRAL RAILROAD COMPANY
vs.
WILLIAM WOODWARD, WILLIAM H. BALDWIN, JUN'R, Christopher C. Baldwin. } Error to the circuit court of the U. States for the northern district of Illinois.

It is hereby stipulated that the record in this cause may be filed by the 20th of December, 1864, with the same force and effect as though filed under the rules of said court within the first six days of the December term, 1864, and when so filed said cause shall be docketed pursuant to the rules of the court, and this stipulation may be made a part of the record of said cause.

Chicago, December 1st, 1864.

GOOKINS & ROBERTS,
Att'ys for Defend't in Error.
McALLISTER, JEWETT & JACKSON,
Att'ys for Pl'f't in Error.

Endorsed: Filed Dec'r 1st, 1864.

WM. H. BRADLEY, *Clk.*

145 On this day, to wit, the 1st day of June, A. D. 1864, came said Illinois Central Railroad Company, by its attorneys, and filed in said clerk's office its appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

Supreme Court of the United States.

THE ILLINOIS CENTRAL RAILROAD COMPANY
vs.
WILLIAM WOODWARD, CHRISTOPHER C. BALDWIN, AND William H. Baldwin. } In error.

Know all men by these presents that the Illinois Central Railroad Company, John M. Douglas and William R. Arthur, are held and firmly bound unto the above-named William Woodward, Christopher C. Baldwin, and William H. Baldwin in the penal sum of fifteen thousand dollars, ($15,000,) lawful money of the United States, to be paid to the said William Woodward, Christopher C. Baldwin, and William H. Baldwin, their executors or administrators; to which payment, well and truly to be made, the said Illinois Central Railroad Company binds itself and its successors, and the said John M. Douglas and William R. Arthur bind themselves, jointly and severally, and their and each of their heirs, executors, and administrators, firmly
146 by these presents. In witness whereof the said Illinois Central Railroad Company has caused these presents to be executed by its President, and its corporate seal to be hereto attached, and the said John M. Douglas and William R. Arthur have hereunto set their hands and seals this 26th day of May, A. D. 1864.

Whereas the above-named Illinois Central Railroad Company has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled cause by the circuit court of the United States for the northern district of Illinois: Now, therefore, the condition of this obligation is such that if the above-named Illinois Central Railroad Company shall prosecute its said writ of error to effect, and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and effect.

Witness the corporate seal of said company, upon the day and year above written.

The Illinois Central Railroad Company, by—
W. H. OSBORN, *Pr's't.* [SEAL.]
JOHN M. DOUGLAS. [SEAL.]
W. R. ARTHUR. [SEAL.]

Sealed and delivered in presence of—
JOSEPH F. TUCKER.

Approved.
THOMAS DRUMMOND.

Endorsed: Filed June 1st, 1864.
W. H. BRADLEY, *Clerk.*

147 On this day, to wit, the 1st day of December, A. D. 1864, came said parties, by their attorneys, and filed in said clerk's office their stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

United States of America, Supreme Court, December term, 1864.

WILLIAM WOODWARD, WILLIAM H. BALDWIN, JUN'R, Christopher C. Baldwin
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Error to the circuit court of the United States for the northern district of Illinois.

It is hereby stipulated that the record in this cause may be filed by the 20th of December, 1864, with the same force and effect as though filed under the rules of said court within the first six days of the December term, 1864,

and when so filed said cause shall be docketed pursuant to the rules of the court, and this stipulation may be made a part of the record of said cause.

Chicago, December 1st, 1864.

McALLISTER, JEWETT & JACKSON,
Att'ys for Def't in Error.
GOOKINS & ROBERTS,
Att'ys for Plaintiffs in Error.

Endorsed: Filed Dec. 1st, 1864.

148 WM. H. BRADLEY, *Clk.*

On this day, to wit, the sixteenth day of December, A. D. 1864, came said parties, by their attorneys, and filed in said clerk's office their additional stipulation in said entitled cause; which said additional stipulation is in the words and figures following, to wit:

William Woodward, William H. Baldwin, Jr., Christopher C. Baldwin *vs.* The Illinois Central Railroad Company.	Error to the circuit court of the United States for the northern district of Illinois.

United States of America, Supreme Court, December term, 1864.

The Illinois Central Railroad Company. *vs.* William Woodward, William H. Baldwin, Jr., Christopher C. Baldwin.	Error to the circuit court of the United States for the northern district of Illinois.

It is agreed that the records may be filed in the above entitled cause by the first day of January, 1865, with the same force and effect as though filed on the first day of this term.

Dec. 16th, 1864.

GOOKINS & ROBERTS, *for Woodward et al.*
149 McALLISTER, JEWETT & JACKSON,
for Ill. C. RR. Co.

Endorsed: Filed Dec'b. 16th, 1864.

WM. H. BRADLEY, *Clk.*

Northern District of Illinois, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States within and for said northern district of Illinois, do hereby certify that the accompanying and foregoing transcript from pages one to one hundred and forty-eight, inclusive, contains a true, full, and perfect copy from the record of all the proceedings which have been had in said court in said cause of William Woodward *et al.* against the Illinois Central Railroad Company as the original of the same now remain in my custody, and that the writ of error and citation sued out by said plaintiffs in error in said cause are also hereto attached to the transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said northern district, this seventeenth day of December, A. D. 1864.

WM. H. BRADLEY, *Clerk.*

Filed December 30th, 1864.